TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible]

No. [illegible]54

STURGES AND BURN MANUFACTURING COMPANY,
PLAINTIFF IN ERROR,

vs.

ARTHUR BEAUCHAMP.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

FILED JULY 7, 1911.

(22,796)

(22,796)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 380.

STURGES AND BURN MANUFACTURING COMPANY, PLAINTIFF IN ERROR,

vs.

ARTHUR BEAUCHAMP.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 1, 1913

1 At a Supreme Court Begun and Held at Springfield on Tuesday, the Seventh Day of February, in the Year of Our Lord One Thousand Nine Hundred and Eleven, Within and for the State of Illinois.

Present:

The Honorable Orrin N. Carter, Chief Justice.
Honorable James H. Cartwright, Justice.
Honorable William M. Farmer, Justice.
Honorable Frank K. Dunn, Justice.
Honorable John P. Hand, Justice.
Honorable Alonzo K. Vickers, Justice.
Honorable George A. Cooke, Justice.
William H. Stead, Attorney General.
Warren C. Murray, Marshal.

Attest:

J. McCAN DAVIS, *Clerk*.

Be it remembered, to-wit, on the Seventeenth day of January A. D. 1911, the same being one of the days in vacation before the term of Court aforesaid, a record of the proceedings in the Appellate Court of First District and the Superior Court of Cook County was filed by appellant the Sturges & Burn Manufacturing Company (a corporation) in the office of the Clerk of the Supreme Court in words and figures following to-wit:

2 279. 15442.
7584. Ag. 55.

Record from Superior Court of Cook County to Appellate Court.

Gen. No. 261,717.

ARTHUR BEAUCHAMP, by, etc.,
vs.
STURGES & BURN MANUFACTURING COMPANY (a Corp.).

Filed Appellate Court Mar. 3, 1909. Alfred R. Porter, Clerk.
Filed Jan. 17, 1911. J. McCan Davis, Clerk of Supreme Court.

Bulkley, Gray & More, Att'ys.

3 UNITED STATES OF AMERICA:

STATE OF ILLINOIS,
County of Cook, ss:

Pleas Before the Honorable Marcus Kavanagh, One of the Judges of the Superior Court of Cook County, in the State of Illinois, Holding a Branch Court of said Court, at a Regular Term of said Superior Court of Cook County, Begun and Holden at the Court House, in the City of Chicago, in said County and State, on the First Monday, Being the Seventh Day of December, in the Year of Our Lord One Thousand Nine Hundred and Eight, and of the Independence of the United States of America the One Hundred and Thirty-Third.

Present:

The Honorable Marcus Kavanagh, Judge of the Superior Court of Cook County.
John E. W. Wayman, State's Attorney.
Christopher Strassheim, Sheriff of Cook County.

Attest:

CHARLES W. VAIL, *Clerk.*

Be it remembered that heretofore to-wit on July 18th in the year of our Lord One thousand nine hundred and seven, there was filed in the office of the Clerk of the Superior Court of Cook county a certain Præcipe which is in the words and figures as follows, to-wit:

Præcipe, Superior Court.

STATE OF ILLINOIS,
County of Cook, ss:

Superior Court of Cook County, July Term, A. D. 1907.

ARTHUR BEAUCHAMP, by NEPTHALI BEAUCHAMP, His Next Friend,
Plaintiff,
vs.
STURGES & BURN MANUFACTURING COMPANY, a Corporation,
Defendant.

Case. Damages, $15,000.00.

4 The Clerk of said Court will issue a Summons in the above entitled cause to said defendant in a plea of Trespass on the case to the damage of said Plaintiff in the sum of Fifteen thousand Dollars, direct the same to the Sheriff of Cook County to execute and make it returnable to the August term of said Court, A. D. 1907.

GEO. E. GORMAN &
WILLIAM BIGANE,
Plaintiff's Attorneys.

To Charles W. Vail, Esq., Clerk.

CHICAGO, *July* 18, 1907.

And on to-wit: *on* July 18th A. D. 1907 there issued out of the office of the Clerk of said Court the People's Writ of Summons directed to the Sheriff of Cook County to execute which said writ with the Sheriff's return thereon endorsed is in the words and figures as follows, to-wit.

Summons, Superior Court.

STATE OF ILLINOIS,
Cook County, ss:

The People of the State of Illinois to the Sheriff of said County, Greeting:

We command you that you summon Sturges & Burn Manufacturing Company, a corporation, if it shall be found in your County, personally to be and to appear before the Superior Court of Cook County on the first day of the Term thereof, to be holden at the Court House, in the City of Chicago, in said Cook County in the building S. W. corner Monroe & Clark street- now occupied as such on the first Monday of August next to answer unto Arthur Beauchamp by Nephtali Beauchamp his next friend in a plea of trespass on the case to the damage of said plaintiff, as it is said in the sum of
5 of fifteen thousand dollars ($15,000.00). And have you then and there this Writ, with an endorsement thereon in what manner you shall have executed the same.

Witness, Charles W. Vail, Clerk of our said Court, and the Seal thereof, at Chicago, aforesaid, this 18th day of July A. D. 1907.

[SEAL.] CHARLES W. VAIL, *Clerk.*

Pd..... 1.75
M..... .20

Served this writ on the within named Sturges & Burn Manufacturing Company, a corporation, by delivering a copy thereof to W. H. Burn, Secretary of said corporation this 22nd day of July 1907. The president of said corporation not found in my county.

CHRISTOPHER STRASSHEIM, *Sheriff,*
By THOS. J. McNICHOLS, *Deputy.*

And afterwards to-wit on the 26th day of July A. D. 1907 a certain Declaration was filed in the office of the Clerk of said Court in words and figures following to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No. 261,717.

ARTHUR BEAUCHAMP, by NEPHTALI BEAUCHAMP, His Next Friend,
vs.
STURGES & BURNS MANUFACTURING CO.

Arthur Beauchamp, by Nephtali Beauchamp, his next friend, by Geo. E. Gorman, and William Bugane, his attorneys, complains of Sturges & Burns Manufacturing Company, of a plea of trespass on the case.

For that whereas on to-wit, April 26, A. D. 1907, the de-
6 fendant Sturges & Burns Manufacturing Company, a corporation were engaged in the manufacture of tin, tin-ware and other metal products, and then and there used in the manufacture of its said metal products certain stamping machines operated by steam power, for use in stamping sheet metal tinware and other metal products, and the plaintiff herein was in the employ of the defendant, and was engaged at work on divers of the machines so as aforesaid used by the defendant at its said factory, at, to-wit, No. 249 Green street, in the City of Chicago, Cook County, Illinois.

Further complaining the plaintiff charges that on, to-wit, the date aforesaid, while the plaintiff was employed by said defendant and while plaintiff was then and there a minor, under the age of sixteen (16) years, the said defendant then and there directed the plaintiff to go to work and operate a certain machine, known as a punch press, which said punch press was then and there being used by the defendant in the defendant's said factory in stamping certain sheets of metal and which said punch press was then and there being operated by steam power.

Further complaining the plaintiff charges that there was then and there in full force and effect a certain Statute theretofore passed by the legislature of the State of Illinois which said Statute is known as Paragraph 15, chapter 48, in Revised Statutes of Illinois, which said statute is in words and figures following, to-wit:

Paragraph 15, Employments forbidden children under sixteen years of age. Section 11. No child under the age of sixteen years shall be employed at sewing belts, or to assist in sewing belts, in any capacity whatever; nor shall any child adjust any belt to any machinery; they shall not oil or assist in oiling, wiping or cleaning machinery; they shall not operate or assist in operating circular or
band saws, wood-shapers, wood-jointers, planers, sand-paper
7 or wood-polishing machinery, emery or polishing wheels used for polishing, metal, wood-turning or boring machines, stamping machines in sheet metal and tinware manufacturing, stamping machines in washer and nut factories, operating corrugating rolls, such as are used in roofing factories, nor shall they be

employed in operating any passenger or freight elevators, steam boiler, steam machinery, or other steam generating apparatus or as pin boys in any bowling alleys; they shall not operate or assist in operating, dough brakes, or cracker machinery of any description; wire or iron straightening machinery; nor shall they operate or assist in operating rolling mill machinery punches or sheers, washing, grinding or mixing mill or calend*a*r rolls in rubber manufacturing, nor shall they operate or assist in operating laundry machinery; nor shall small children be employed in any capacity in preparing any composition in which dangerous or poisonous acids are used, and they shall not be employed in any capacity in the manufacture of paints, colors, or white lead; nor shall they be employed in any capacity whatever in operating or assisting to operate any passenger or freight elevator; nor shall they be employed in any capacity whatever in the manufacture of goods for immoral purposes, or for any other employment that may be considered dangerous to their lives or limbs, or where their health may be injured, or morals depraved; nor in any theatre, concert hall, or place of amusement wherein intoxicating liquors are sold; nor shall females under sixteen years of age be employed in any capacity where such employment compels them to remain standing constantly.

Further complaining the plaintiff charges that the said defendant well knowing the premises did then and there on, to-wit, the date aforesaid, in violence of said Statute, direct the plaintiff herein to operate, manage and control said punch press and to stamp the said sheets of tin, upon said punch press, and while so engaged at his work for the said defendant, and under the directions and control of the said defendant, the p'aintiff then and there without fault on his part and while in the exercise of all due care and caution for his safety, the said punch press while the plaintiff was then and there operating the same then and there came down upon his right hand and the plaintiff's said right hand was then and thereby greatly crushed, wounded and injured and divers of the bones — fingers of the plaintiff's right hand were then and there so injured and mangled that amputation thereof became and was necessary, and the plaintiff was otherwise injured and his right hand, wrist and arm are, and in the future will be permanently injured and disabled, and he has suffered great pain and anguish of body and mind and he will in the future continue to suffer great pain and anguish of mind and body and the plaintiff has been otherwise injured and has sustained damages in the sum of Fifteen thousand dollars ($15,000.00).

8

ARTHUR BEAUCHAMP, *Plaintiff*,
By NEPHTALI BEAUCHAMP,
His Next Friend.
By GEO. E. GORMAN AND
WILLIAM BIGANE,
His Attorney.

And afterwards to-wit on the 5th day of August A. D. 1907 a certain Demurrer was filed in the office of the Clerk of said Court in words and figures following to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court Thereof.

ARTHUR BEAUCHAMP, by NEPHTALI BEAUCHAMP, His Next Friend,
v.
STURGES & BURN MANUFACTURING COMPANY.

Demurrer.

Now comes the defendant, Sturges & Burn Manufacturing Company, by Bulkley, Gray & More, its attorneys, and defends the wrong and injury, when, etc., and says that the said declaration and the matters therein contained, in manner and form as the same are above set forth, are not sufficient in law for the plaintiff to maintain his aforesaid, action, and that it, the defendant, is not bound by law to answer the same, and this it is ready to verify.

Wherefore, for want of a sufficient declaration in this behalf, the defendant prays judgment, and that the plaintiff may be barred from maintaining his aforesaid action, and the defendant shows to the court the following special causes of demurrer to the said declaration.

First. The defendant is not charged with any negligence.

Second. The statute set forth in the declaration is in violation of Section 13, article 4 of the Constitution of Illinois, which provides that "no act hereafter passed shall embrace more than one subject and that shall be expressed in the title, but if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed," and the subject of section 11, set forth in plaintiff's declaration is not expressed in the title of the Act of which it forms a part, and is therefore void.

Third. The Statute counted upon in plaintiff's declaration is in violation of Section 2, Article 2 of the Constitution of Illinois, and the Fourteenth Amendment of the Constitution of the United States, in that it deprives the defendant of its property viz: its right to contract, without due process of law, and is therefore void.

Fourth. The Statute counted upon in plaintiff's declaration, even if valid, cannot be used as the foundation of a suit for damages.

Fifth. The damages suffered and sought to be recovered by plaintiff, as set forth in his declaration, are not the proximate result of the injury complained of, namely, the violation of the Statute.

Sixth. The declaration, in other respects, is uncertain, informal, and insufficient.

BULKLEY, GRAY & MORE,
Attorneys for Defendant.

And afterwards to-wit, on August 17th A. D. 1907, certain proceedings were had and entered of record in said Court to-wit:

261,717.

ARTHUR BEAUCHAMP, by, etc.,
vs.
STURGIS AND BURN MANUFACTURING COMPANY, a Corp.

Case.

On motion of plaintiff's attorney it is ordered that leave be and is hereby given the plaintiff to file an amended declaration herein instanter and the defendant required to plead thereto within ten days from this date.

And on towit the 14th day of August A. D. 1907 a certain Amended Declaration was filed in the office of the Clerk of said Court in words and figures following to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No. 261,717. T. No. 17770.

ARTHUR BEAUCHAMP, by NEPHTALI BEAUCHAMP, His Next Friend,
vs.
STURGES & BURN MANUFACTURING COMPANY.

11 And now comes the plaintiff, Arthur Beauchamp, by Nephtali Beauchamp, his next friend, by George E. Gorman, his attorney, and files this his amended declaration in the above entitled cause, leave of court for this purpose having been first had and obtained.

For that whereas on, to-wit, April 26, 1907, and long prior thereto, the defendant, Sturges & Burn Manufacturing Company, a corporation, was engaged in the manufacture of tin pails, cans, boxes and other dairy utensils in the city of Chicago, county of Cook and State of Illinois, and in the prosecution of its said business the said defendant made use of certain stamping machines which were operated by steam power or electricity, and the defendant then and there employed a large number of men and boys in and about the operation of said machines.

Further complaining the plaintiff charges that on, to-wit, the date aforesaid, he was then and there a minor of tender years, to-wit, fifteen (15) years of age, and was then and there in the employ of the defendant as a machine hand; and it became the duty of the plaintiff in the prosecution of the work required of him by the de-

fendant to assist in the operation of certain of said machines so as aforesaid used by the defendant in its manufacturing establishment.

Further complaining the Plaintiff charges that the said defendant on, to-wit, the date aforesaid, and prior thereto, had a certain machine in its factory, which said machine was called a punch press and was then and there operated by steam and was used by the defendant in stamping certain sheet metal, tin-ware and other substances then and there being used by the defendant in the manufacture of tin pails, cans, boxes and other dairy implements,
12 which said machine plaintiff charges was on the date aforesaid in a defective and unsafe condition in this, that said machine would not respond to a certain lever which was designed to operate and control said machine, and that said machine was in other respects dangerous and unsafe, all of which conditions relating to said machine were well known to the defendant, or by the exercise of reasonable care on the part of said defendant would have been known to the said defendant.

Further complaining the plaintiff charges that he was not familiar with said defective machine and had not equal means of knowing of the defective condition of said machine with the defendant, and the defendant well knowing the premises on, to-wit, the date aforesaid, in violation of the duty of the defendant to exercise reasonable care in and about maintaining said machine in a reasonably safe condition for use by the plaintiff, directed the plaintiff to operate said machine while said machine was as aforesaid in a defective and dangerous condition and the plaintiff, then and there being under the control and direction of the defendant, without knowledge or means of knowing of the dangerous and unsafe condition of said machine, did then and there in obedience to the directions and commands of the defendant, begin to operate said machine and while so operating said machine and while exercising all due care and caution for his own safety in so doing, said punch press repeated thereby striking the plaintiff on the right hand with such force and violence as to greatly injure, wound and crush the fingers of said right hand, and the plaintiff's hand and fingers were so badly injured that amputation thereof became necessary; and divers of the bones of the plaintiff's right hand were greatly crushed, bruised and
13 wounded and he became and was and still is disabled in said right hand and so permanently will remain, and said hand has been rendered crippled and useless for life, and he suffered great pain and anguish of body and mind and will in the future continue to suffer great pain and anguish as the result of the injury to his said hand, and he has been otherwise injured and has sustained damages in the sum of Fifteen Thousand Dollars ($15,000).

For that whereas, also on, to-wit, April 26, 1907, the defendant, Sturges & Burn Manufacturing Company, a corporation, was engaged in the manufacture of tinware, pails, buckets, boxes and other dairy utensils at number 249 Green street in the city of Chicago, County of Cook and State of Illinois, and in the prosecution of its said business the defendant made use of divers machines, presses, punches and other contrivances operated by steam power, and the

plaintiff who was then and there a minor of tender years, to-wit, fifteen (15) years of age, was in the employ of the defendant and was assigned by the defendant to work on certain of the machines, presses, punches, etc. so as aforesaid used by the defendant in its said factory.

Further complaining the plaintiff charges that on, to-wit, the date aforesaid, the defendant had a certain machine called a punch press in its said factory, which punch press was used by the defendant in stamping certain sheets of tin and other metals for use in the manufacture of its said products which said machine was operated by steam power and was highly dangerous to one not familiar with the operation of said machine or the dangers to be encountered in the operation of the same; and that because of his youth, inexperience and lack of familiarity with said machine the plaintiff was incapable of understanding and comprehending the said dangers so as
14 aforesaid to be encountered in the operation of said machine and that the defendant well knew that the plaintiff herein was unfamiliar with the method of operation of said machine and the dangers to be encountered in operating same.

By means whereof it became and was the duty of the defendant before directing the plaintiff to operate said machine to instruct the plaintiff in the method of its operation and to warn the plaintiff of the dangers and risks to be encountered in and about the operation of the said machine.

But in this the plaintiff charges the defendant made default, and carelessly, negligently and improperly, in violation of its duty to the plaintiff under the law, directed and commanded the plaintiff to operate said punch press aforesaid and did not then and there inform the plaintiff of the method of said machine's operation and of the dangers and risks to be encountered in and about the operation of said machine, and the plaintiff, being then and there under the control and direction of the defendant, and while operating said punch press under the control and direction of the defendant, and while exercising all due care and caution for his own safety, had his hand caught in said punch press while the same was in operation and the plaintiff's right hand was then and there and thereby so badly crushed and mangled that amputation of the fingers of said right hand became and was necessary and the plaintiff has by means of the premises lost the fingers of his said right hand and the use of his right hand has became materially impaired, and he suffered great pain and anguish in body and mind and he will in the future suffer great pain and anguish, and the plaintiff's right hand has been permanently disabled and its usefulness impaired and he has been otherwise injured and has sustained damages in the sum of Fif-
15 teen Thousand Dollars ($15,000.)

For that whereas also on, to-wit, April 26, 1907, the defendant, Sturges & Burn Manufacturing Company, a corporation, was engaged in the manufacture of tin, tin-ware, and other metal products, and then and there used in the manufacture of its said metal products certain stamping machines operated by steam power, for use in stamping sheet metal, tin-ware and other metal products,

and the plaintiff herein was in the employ of the defendant and was engaged at work on divers of the machines so as aforesaid used by the defendant at its said factory at, to-wit, number 249 Green street, in the City of Chicago, County of Cook and State of Illinois.

Further complaining the plaintiff charges that on, to-wit, the date aforesaid, while the plaintiff was employed by said defendant and while plaintiff was then and there a minor, under the age of sixteen (16) years, the said defendant then and there directed the plaintiff to go to work and operate a certain machine known as a punch press, which said punch press was then and there being used by the defendant in the defendant's said factory in stamping certain sheets of metal and which said punch press was then and there being operated by steam power.

Further complaining the plaintiff charges that there was then and there in full force and effect a certain statute theretofore passed by the legislature of the state of Illinois, which said statute is known as Paragraph 15, chapter 48, in Revised Statutes of Illinois, which said statute is in words and figures following, to-wit:

Paragraph 15. Employment Forbidden Children under Sixteen Years of Age. Section 11. No child under the age of sixteen years shall be employed at sewing belts, or to assist in sewing belts,
16 in any capacity whatever; nor shall any child adjust any belt to any machinery; they shall not oil or assist in oiling, wiping or cleaning machinery; they shall not operate or assist in operating circular or band saws, wood-shapers, wool-jointers, planers, sand-paper or wood polishing machinery, emery or polishing wheel used for polishing metal, wood turning or boring machines, stamping machines in sheet metal and tinware manufacturing, stamping machines in washer and nut factories, operating corrugating rolls such as are used in roofing factories, nor shall they be employed in operating any passenger or freight elevators, steam boiler, steam machinery, or other steam generating apparatus or as pin boys in any bowling alleys; they shall not operate or assist in operating, dough brakes, or cracker machinery of any description; wire or iron straightening machinery; nor shall they operate or assist in operating rolling mill machinery, punches, or shears, washing, grinding, or mixing mill or calender rolls in rubber manufacturing, nor shall they operate or assist in operating laundry machinery; nor shall children be employed in any capacity in preparing any composition in which dangerous or poisonous acids are used, and they shall not be employed in any capacity in the manufacture of paints, colors, or white lead; nor shall they be employed in any capacity whatever in operating or assisting to operate any passenger of freight elevator; nor shall they be employed in any capacity whatever in the manufacture of goods for immoral purposes, or any other employment that may be considered dangerous to their lives or limbs, or where their health may be injured or morals depraved; nor in any theatre, concert hall, or place of amusement wherein intoxicating liquors are sold; nor shall females under sixteen years of age be employed in any capacity where such employment compels them to remain standing constantly.

17 Further complaining the plaintiff charges that the said defendant well knowing the premises, did then and there on, to-wit, the date aforesaid, in violation of said statute, direct the plaintiff herein to operate, manage and control said punch press and to stamp the said sheets of tin upon said punch press and while so engaged at his work for the said defendant, the plaintiff then and there, without fault on his part, and while in the exercise of all due care and caution for his own safety in operating said punch press, had his right hand caught in said punch press, and the plaintiff's right hand was then and there and thereby greatly crushed, wounded and injured and divers of the bones and fingers of the plaintiff's right hand were then and there so injured and mangled that amputation thereof became and was necessary, and the plaintiff was otherwise injured and his right hand, wrist and arm are, and in the future will be permanently injured and disabled, and he has suffered great pain and anguish of body and mind and he will in the future continue to suffer great pain and anguish of mind and body and the plaintiff has been otherwise injured and has sustained damages in the sum of fifteen thousand dollars ($15,000).

ARTHUR BEAUCHAMP,
By NEPTHALI BEAUCHAMP,
By GEO. E. GORMAN,
His Attorney.

And afterwards to-wit on the 21st day of August A. D. 1907 a certain General and Special Demurrer was filed in the office of the Clerk of said Court in words and figures following to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court Thereof.

ARTHUR BEAUCHAMP, by His Next Friend, etc.,
18 vs.
STURGES & BURN MANUFACTURING COMPANY.

Now comes the defendant, Sturges & Burn Manufacturing Company, by Bulkley, Gray & Moore, its attorneys, and defends the wrong and injury, when, etc., and says that the first two counts of the amended declaration, and the matters therein contained in manner and form as the same as are above set forth are not sufficient in law for the plaintiff to maintain his aforesaid action, and that it, the defendant, is not bound by law to answer the same, and this it is ready to verify.

Therefore, for want of a sufficient count in this behalf, the defendant prays judgment, and that plaintiff may be barred from maintaining his aforesaid action, and the defendant shows to the Court here the following special causes of demurrer to the said counts:

First. That said counts are too vague, general and indefinite in describing how the alleged accident was caused;

Second. The defendant is not charged with negligence which caused the injury complained of.

Third. The said counts are in other respects uncertain, informal and insufficient.

BULKLEY, GRAY & MOORE,
Attorneys for Defendant.

STATE OF ILLINOIS,
County of Cook, ss:

Almon W. Bulkley, being first duly sworn, deposes and says that he is one of the attorneys for the defendant in the above entitled cause, and that in his opinion the foregoing demurrer is well founded in law, and that the same is not interposed for delay.

ALMON W. BULKLEY

Subscribed and sworn to before me this 21st day of August 1907.

C. PAUL TALLMADGE.
Notary Public, Cook County, Ill.

19 And the defendant Sturges & Burn Manufacturing Company by Bulkley, Gray & Moore, its attorneys, comes and defends the wrong and injury done when, etc. and says as to the third count of the amended declaration, that the same and the matters therein contained in manner and form, etc. are not sufficient in law for the plaintiff to maintain his aforesaid action, and that it, the defendant, is not bound by law to answer the same and this it is ready to verify.

Wherefore for want of a sufficient count in this behalf, the defendant prays judgment, and that plaintiff may be barred from maintaining his aforesaid action, and the defendant shows to the Court here the following special causes of demurrer to the said counts:

First. The defendant is not charged with any negligence.

Second. The statute set forth in the declaration is in violation of Section 13, Article 4 of the Constitution of Illinois, which provides that "no act hereafter passed shall embrace more than one subject and that shall be expressed in the title, but if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed." and the subject of Section 11, set forth in plaintiff's declaration, is not expressed in the title of the Act of which it forms a part, and is therefore void.

Third. The Statute counted upon in plaintiff's declaration is in violation of Section 2, article 2 of the Constitution of Illinois, and the Fourteenth Amendment of the Constitution of the United

20 States, in that it deprives the defendant of its property, viz. its right to contract, without due process of law, and is therefore void.

Fourth. The Statute counted upon in plaintiff's declaration, even if valid, cannot be used as the foundation of a suit for damages.

Fifth. The damages suffered and sought to be recovered by plain-

tiff, as set forth in his declaration, are not the proximate result of the injury complained of, namely, the violation of the statute.

Sixth. The declaration, in other respects, is uncertain, informal and insufficient.

BULKLEY, GRAY & MOORE,
Attorneys for Defendant.

STATE OF ILLINOIS,
County of Cook, ss:

Almon W. Bulkley, being first duly sworn, deposes and says that he is one of the attorneys for the defendant in the above entitled cause, and that in his opinion, the foregoing demurrer is well founded in law, and that the same is not interposed for delay.

ALMON W. BULKLEY.

Subscribed and sworn to before me this 21st day of August, 1907.
[SEAL.] C. PAUL TALLMADGE,
Notary Public, Cook County, Ill.

And afterwards to-wit on April 11th A. D. 1908 certain proceedings were had and entered of record in said Court towit:

261,171.

ARTHUR BEAUCHAMP, by, etc.,
vs.
STURGES & BURN MANUFACTURING COMPANY, a Corp.

Case.

This cause coming on to be heard upon the demurrer to
21 the first second and third counts of the plaintiff's amended declaration filed herein after argument of counsel and due deliberation by the Court said demurrer is sustained and it is ordered that leave be and is hereby given the plaintiff to amend said counts within ten days from this date.

And afterwards to-wit on April 18th A. D. 1908 certain proceedings were had and entered of record in said Court to-wit:

261,717.

ARTHUR BEAUCHAMP, by, etc.,
vs.
STURGES & BURN MANUFACTURING COMPANY, a Corp.

Case.

On motion of plaintiff's attorneys it is ordered that leave be and is hereby given the plaintiff to file additional counts to his declaration filed herein instanter and the defendant required to plead thereto within fifteen days from this date.

And on to-wit *on* the 18th day of April 1908 a certain Second Amended Declaration was filed in the office of the Clerk of said Court, in words and figures following to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No. 261,717. Term No. 17770.

ARTHUR BEAUCHAMP, by NEPHALTI BEAUCHAMP, His Next Friend,
vs.
STURGES & BURN MANUFACTURING COMPANY.

Now comes the plaintiff Arthur Beauchamp, by Nephtali
22 Beauchamp, his next friend, by Geo. E. Gorman and William Bigane, his attorneys, and files this his second amended declaration in the above entitled cause, leave of court for this purpose having been first had and obtained.

For that whereas, on, to-wit, April 26, 1907, and long prior thereto, the defendant Sturges & Burn Manufacturing Company, a corporation, was engaged in the manufacture of tin pails, cans, boxes and other dairy utensils in the City of Chicago, County of Cook and State of Illinois and in the prosecution of its said business the said defendant made use of certain stamping machines, which were operated by steam power or electricity and the defendant then and there employed a large number of men and boys in and about the operation of said machine.

Further complaining the plaintiff charges that on to-wit, the date aforesaid, he was in the employ of the defendant as a machine hand, and it became and was the duty of the plaintiff in the prosecution of the work required of him by the defendant to assist in the operation of said machines so as aforesaid used by the defendant in its manufacturing establishment.

Further complaining the plaintiff charges that the said defendant, on to-wit, the date aforesaid and prior thereto had a certain machine in its factory, which said machine was called a punch press and was then and there operated by steam power and was used by the defendant in stamping certain sheet metal, tinware and other substances then and there being used by the defendant in the manufacture of tin pails, cans boxes and other dairy implements, which said machine, plaintiff charges, was on the date aforesaid in a defective and unsafe condition in this that the portion of the machine which was de-
signed to act in response to the movements of a certain lever,
23 did not respond to the movements of said lever, but would repeat, all of which the defendant well knew or by the exercise of reasonable care would have known in time to have remedied the same before the infliction of the injuries herein complained of, and all of which said conditions the plaintiff did not know and had not equal means of knowledge thereof with the defendant.

Further complaining the plaintiff charges that, on, to-wit, the date aforesaid, while the plaintiff herein was operating said machine, under the direction and control of the defendant and while in the exercise of all due care and caution for his own safety, in view of his age, experience, intelligence and discretion, plaintiff herein being then and there a minor of the age of to-wit, fifteen (15) years, the said punch press failed to respond to the action of the lever aforesaid and then and there repeated, while the plaintiff was then and there inserting certain material in said punch press to be thereby stamped and thereby then and there the fingers and hand of the plaintiff became caught in said punch press and the said punch press struck against and upon the fingers and hand of the plaintiff with great force and violence and the fingers and hand of the plaintiff were then and there greatly wounded, cut, crushed and bruised that amputation thereof became and was necessary and he became and was and still is disabled in his right hand and he so permanently will remain and said hand has been rendered crippled and useless for life and he suffered great pain and anguish of body and in mind and he will in the future suffer great pain and anguish as the result of the injury to his said hand, and he has been otherwise injured and has sustained damages in the sum of Fifteen Thousand Dollars ($15,000.00).

21 For that whereas on, to-wit, April 26, 1907, the defendant the Sturges & Burn Manufacturing Company, a corporation, was engaged in the manufacture of tinware, pails, buckets, boxes and other dairy utensils in the building known as number 249 Green street in the City of Chicago, County of Cook and State of Illinois and in the prosecution of its said business, the defendant made use of divers machines, presses, punches and other contrivances operated by steam power and the plaintiff who was then and there a minor of tender years, to-wit, fifteen (15) years, was in the employ of the defendant and was assigned by the defendant to work on certain of the machines presses, punches and other machinery so as aforesaid used by the defendant in the said factory.

Further complaining the plaintiff charges that, on to-wit, the date aforesaid, the defendant had in its said factory a certain machine called a punch press which punch press was used by the defendant in stamping certain sheets of tin and other metals which said machine was operated by steam power and was dangerous to one not familiar with the operation of said machine and the dangers to be encountered and guarded against in the operation of the same.

Further complaining the plaintiff charges that prior to the day on which the accident herein complained of occurred, the plaintiff was unfamiliar with the use thereof and by reason of the plaintiff's youth, inexperience and lack of familiarity with said machine, the plaintiff herein did not know and had not equal means of knowing with the defendant of the dangers to be encountered and guarded against in the operation of said machine and the said defendant on and prior to the date aforesaid knew that the plaintiff was inexperienced in the use of said machine and was unfamiliar with the method of operating said machine and it thereby became and was the duty of the defendant before assigning the plaintiff to work on

said machine to instruct the plaintiff in the method of the
25 operation of said machine and to warn the plaintiff of the dangers to be encountered and guarded against in and about the operation of said machine.

Further complaining the plaintiff charges that said machine was so constructed and operated in such manner that at times the punch of said press or that portion of said machine which had an upward and downward motion and was designed to and when in operation did stamp tin and other metals that were placed into said machine, would at times fail to respond to a certain lever which said lever was intended to operate said machine and that when said machine failed to respond to the action of said lever, the said punch would repeat and that when said punch repeated, there was great danger to the operator of said machine getting his hand caught in said punch while placing tin and other metal to be stamped into said press.

Further complaining the plaintiff charges that the dangers hereinabove recited and the movements and actions of the press hereinabove described were well known to the defendant but the plaintiff herein did not know and had not equal means of knowing with the defendant of the actions of said press and the dangers to be encountered and guarded against when said press repeated as hereinabove alleged.

Further complaining the plaintiff charges that on, to-wit, April 26, 1907, while in the exercise of such care and caution as might reasonably be expected from one of his age, experience, intelligence, capacity and understanding, and while under the direction of the defendant and under said direction engaged in the operation of said machine and while the plaintiff was as aforesaid unfamiliar with
26 the method of said machine's operation, and the dangers to be encountered and guarded against in the operation of said machine and while in the act of placing a piece of tin or other metal into said machine for the purpose of stamping same, the said machine repeated and by reason of the plaintiff's lack of familiarity with the operation of said machine and the dangers to be encountered and guarded against in the operation of the same, the plaintiff's right hand was then and there caught in the said punch press when the same repeated and thereby the plaintiff's right hand was greatly hurt, bruised, crushed, wounded and injured and he suffered severe pain and anguish of mind and body and will in the future suffer severe pain and anguish of both mind and body and the right hand of the plaintiff by reason of the premises has become and is permanently injured and is disabled and the usefulness thereof has been permanently impaired and the plaintiff was otherwise injured and he has sustained damages in the sum of Fifteen Thousand dollars ($15,000.00).

For that whereas, also, on to-wit, April 26, 1907, the defendant, Sturges & Burn Manufacturing Company, a corporation, was engaged in the manufacture of tin, tin-ware, and other metal products, and then and there used in the manufacture of its said metal products certain stamping machines operated by steam power, for use in

stamping sheet metal, tin-ware and other metal products, and the plaintiff herein was in the employ of the defendant and was engaged at work on divers of the machines so as aforesaid used by the defendant at its said factory at to-wit, number 249 Green street, in the City of Chicago, County of Cook and State of Illinois.

27 Further complaining the plaintiff charges that on, to-wit, the date aforesaid, while the plaintiff was employed by said defendant and while plaintiff was then and there a minor, under the age of sixteen (16) years, the said defendant then and there directed the plaintiff to go to work and operate a certain machine known as a punch press, which said punch press was then and there being used by the defendant in the defendant's said factory in stamping certain sheets of metal and which said punch press was then and there being operated by steam power.

Further complaining the plaintiff charges that there was then and there in full force and effect a certain statute theretofore passed by the legislature of the State of Illinois, which said statute is known as Paragraph 15, Chapter 48, in Revised Statutes of Illinois, which said statute is in words and figures following, to-wit:

Paragraph 15. Employments forbidden children under sixteen years of age. Section 11. No child under the age of sixteen years shall be employed at sewing belts, or to assist in sewing belts, in any capacity whatever; nor shall any child adjust any belt to any machinery; they shall not oil or assist in oiling, wiping or cleaning machinery; they shall not operate or assist in operating circular or band saws, woodshapers, wool jointers, planers, sand paper or wood polishing metal, wood turning or boring machines, stamping machines in sheet metal and tin ware manufacturing, stamping machines in washer and nut factories, operating corrugating rolls, such as are used in roofing factories, freight elevators steam boiler, steam machinery, or other steam generating apparatus or as pin boys in any bowling alleys; they shall not operate or assist

28 in operating dough brakes or cracker machinery of any description, wire or iron straightening machinery; nor shall they operate or assist in operating rolling mill machinery, punches, or shears, washing, grinding, or mixing mill or calendor rolls in rubber manufacturing; nor shall they operate or assist in operating laundry machinery; nor shall children be employed in any capacity in preparing any composition in which dangerous or poisonous acids are used and they shall not be employed in any capacity in the manufacture of paints, colors or white lead; nor shall they be employed in any capacity whatever, in operating or assisting to operate any passenger or freight elevator; nor shall they be employed in any capacity whatever in the manufacture of goods for immoral purposes, or any other employment that may be considered dangerous to their lives or limbs, or where their health may be injured or morals depraved; nor in any theatre, concert hall, or place of amusement, wherein intoxicating liquors are sold; nor shall females under sixteen years of age be employed in any capacity where such employment compels them to remain standing constantly.

Further complaining the plaintiff charges that the said defendant

well knowing the premises did then and there on, to-wit, the date aforesaid, in violation of said statute direct the plaintiff herein to operate, manage and control said punch press and to stamp the said sheets of tin upon said punch press, and while so engaged at his work for the said defendant, the plaintiff then and there, without fault on his part, and while in the exercise of all due care and caution for his own safety in operating said punch press and by reason of the violation of the Statute aforesaid by the defendant, had his right hand caught in said punch press, and the plaintiff's right hand was then and there and thereby greatly crushed,
29 wounded and injured and divers of the bones and fingers of the plaintiff's right hand were then and there so injured and mangled that amputation thereof became and was necessary, and the plaintiff was otherwise injured and his right hand, wrist and arm are, and in the future will be permanently injured and disabled, and he has suffered great pain and anguish of body and mind and he will in the future continue to suffer great pain and anguish of mind and body and the plaintiff has been otherwise injured and has sustained damages in the sum of Fifteen Thousand dollars ($15,000.00).

ARTHUR BEAUCHAMP,
By NEPHTALI BEAUCHAMP,
His Next Friend.
By GEO. E. GORMAN,
His Attorney.

And afterwards, to-wit, on the 2nd day of May A. D. 1908 a certain Demurrer was filed in the office of the Clerk of said Court in words and figures following to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No. 261,717. Term No. 17770.

ARTHUR BEAUCHAMP, by NEPHTALI BEAUCHAMP, His Next Friend,
vs.
STURGES & BURN MANUFACTURING COMPANY, a Corporation.

Now comes the defendant, Sturges & Burn Manufacturing Company, by Bulkley, Gray & More, its attorneys, and defends the wrong and injury, when, etc., and says, as to the first count of the second amended declaration, and the matters therein contained, in manner and form as the same are above set forth, that the same are not sufficient in law for the plaintiff to maintain his aforesaid action, and that *he*, the defendant, is not bound by law to answer the
30 same. And this *he* is ready to verify.

Wherefore, for want of a sufficient count in this behalf, the defendant prays judgment, and that plaintiff may be barred from

maintaining his aforesaid action, and the defendant shows to the Court here the following special causes of demurrer to the said count;

First. Said count does not aver that the plaintiff was ignorant of the defect, alleged to have caused the injury.

Second. Said count is too vague, general and indefinite in describing how the alleged accident was caused.

Third. The said count is in other respects uncertain, informal and insufficient.

BULKLEY, GRAY & MORE,
Attorneys for Defendant.

STATE OF ILLINOIS,
County of Cook, ss:

Almon W. Bulkley, being first duly sworn, deposes and says that he is one of the defendant's attorneys herein, and that in his opinion the foregoing demurrer is well founded in point of law, and that the same is not interposed for delay.

ALMON W. BULKLEY.

Subscribed and sworn to before me this 1st day of May, 1908.
[SEAL.] C. PANE TALLMADGE,
Notary Public.

And the defendant, Sturges & Burn Manufacturing Company, by Bulkley, Gray & More, its attorneys, comes and defends the wrong and injury, when, etc., and says, as to the second count of the second amended declaration, that the same, and the matters therein contained, in manner and form as the same are above set forth, are not sufficient in law for the plaintiff to maintain his aforesaid
31 action, and that the defendant, is not bound by law to answer the same. And this *he* is ready to verify.

Wherefore, for want of a sufficient count in this behalf, the defendant prays judgment, and that plaintiff may be barred from maintaining his aforesaid action, and the defendant shows to the Court here the following special causes of demurrer to the said count.

First. The defendant is not charged with having violated any duty, which resulted in the alleged injury.

Second. The said count is in other respects uncertain, informal and insufficient.

BULKLEY, GRAY & MORE,
Attorneys for Defendant.

STATE OF ILLINOIS,
County of Cook, ss:

Almon W. Bulkley, being first duly sworn, deposes and says that he is one of the defendant's attorneys herein, and that in his opinion the foregoing demurrer is well founded in point of law, and that the same is not interposed for delay.

ALMON W. BULKLEY.

Subscribed and sworn to before me this 1st day of May, 1908.
[SEAL.] C. PAUL TALLMADGE,
Notary Public.

And the defendant Sturgis & Burn Manufacturing Company, by Bulkley, Gray & More, its attorneys, comes and defends the wrong and injury, when, etc. and says, as to the third count of the second amended declaration, that the same, and the matters therein contained, in manner and form as the same are above set forth, are not sufficient in law for the plaintiff to maintain his aforesaid
32 action, and that *he*, the defendant, is not bound by law to answer the same. And this *he* is ready to verify.

Wherefore, for want of a sufficient count in this behalf the defendant prays judgment, and that plaintiff may be barred from maintaining his aforesaid action, and the defendant shows to the Court here the following special causes of demurrer to the said count:

First. The defendant is not charged with any negligence.

Second. The Statute set forth in the declaration is in violation of Section 13, article 4 of the Constitution of Illinois, which provides that "No act hereafter passed shall embrace more than one subject, and that shall be expressed in the title; but if any subject shall be expressed in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed", and the subject of Section 11 set forth in plaintiff's declaration is not expressed in the title of the act of which it forms a part and is therefore void.

Third. The statute counted upon in plaintiff's third count is in violation of Section 2, article 2 of the Constitution of Illinois, and the fourteenth amendment to the Constitution of the United States, in that it deprives persons, firms and corporations of their property, viz; their right to contract, without due process of law and is therefore void.

Fourth. The statute counted upon, even if valid, can not be used as a foundation of a suit for damages.

Fifth. The damages suffered and sought to be recovered by the plaintiff, as set forth in his declaration, are not the proximate result of the injury complained of, namely the violation of the statute.

33 Sixth. Said count is in other respects uncertain, informal and insufficient.

BULKLEY, GRAY & MORE,
Attorneys for Defendant.

STATE OF ILLINOIS,
County of Cook, ss:

Almon W. Bulkley, being first duly sworn, deposes and says that he is one of the defendant's attorney- herein, and that in his opinion the foregoing demurrer is well founded in point of law, and that the same is not interposed for delay.

ALMON W. BULKLEY.

Subscribed and sworn to before me this 1st day of May 1908.
[SEAL.] C. PAUL TALLMADGE,
Notary Public.

And afterwards to-wit on May 4th A. D. 1908 certain proceedings were had and entered of record in said court towit:

261,717.

ARTHUR BEAUCHAMP, by, etc.,
vs.
STURGES & BURN MANUFACTURING COMPANY, a Corp.

Case.

On the agreement of the parties to this suit now here made in open court it is ordered that said cause be and is hereby passed to be taken up on five days' notice.

And afterwards to-wit, on October 8th, A. D. 1908 certain proceedings were had and entered of record in said court towit:

261,717.

ARTHUR BEAUCHAMP, by, etc.,
vs.
STURGES & BURN MANUFACTURING COMPANY, a Corp.

Case.

This cause coming on to be heard upon the demurrer to the first second and third counts of the plaintiff's second amended declaration filed herein after arguments of counsel and due deliberation
34 by the Court said demurrer is sustained as to the first and second counts and overruled as to the third count and it is ordered that leave be and is hereby given the plaintiff to amend the first and second counts within ten days from this date and the defendant required to plead to said third count within ten days from this date.

And afterwards to-wit, on the 14th day of October A. D. 1908 a certain Additional Counts was filed in the office of the Clerk of said Court, in words and figures following to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No. 261,717. Term No. 17770.

ARTHUR BEAUCHAMP, by NEPHTALI BEAUCHAMP, His Next Friend.
vs.
STURGES & BURN MANUFACTURING COMPANY.

Now comes the plaintiff, Arthur Beauchamp, by Nephthali Beauchamp, his next friend, by Geo. E. Gorman and William Bigane, his attorneys, and files the following additional counts to the second amended declaration, said amended counts to be in lieu of the first and second counts of said second amended declaration, leave of court for this purpose having been first had and obtained.

For that whereas on, to-wit, April 26, 1907 and long prior thereto, the defendant, Sturges & Burn Manufacturing Company, a corporation, was engaged in the manufacture of tin-pails, cans, boxes and other dairy utensils in the City of Chicago, Cook County, Illinois, and in the prosecution of its said busines the said defendant made use of certain stamping machines which were operated by steam-power or electricity and the defendant employed a large number of men and boys in and about the operation of said machinery.

Further complaining the plaintiff charges that on, to-wit, the date aforesaid, he was in the employ of the defendant and it became and was his duty in the prosecution of the work required of him by the defendant to place certain tins into a certain stamping machine and to remove the same from said machine after the same had been stamped and that in doing the work required of him by the defendant, it became necessary for him to put his hands into said machine in placing said tins therein and removing said tins therefrom.

Further complaining the plaintiff charges that the machine aforesaid into which plaintiff was required to place tins to be stamped and to remove same therefrom was known as a stamping machine and that said stamping machine was on towit, April 26, 1907, out of repair and not reasonably safe for the plaintiff's use in this, that the portion of said machine which was designed to act in response to the movements of a certain lever operated by the plaintiff would not respond to the movements of said lever but would repeat and the defendant well knew that the said machine was out of repair as aforesaid and that the stamping part of said machine would repeat and that while said machine was in such condition, defendant well knew that said machine was dangerous and unsafe for the plaintiff to work upon.

Further complaining the plaintiff charges that on to-wit, the date aforesaid, and prior thereto, he did not know and had not equal means of knowledge with the defendant of the defective condition

of said machine or its liability to repeat by reason of its said defective condition and the plaintiff was throughout all the occurrences herein complained of in the exercise of reasonable care for his own safety.

Further complaining the plaintiff charges that on to-wit, the date aforesaid, while the plaintiff was placing certain tins into said
36 machine for the purpose of stamping same and before the lever which controlled the operations of said machine was moved, the said stamping machine by reason of its defective condition as aforesaid, did then and there repeat or descend down to and upon the tins which the plaintiff herein was then and there placing into said machine, and the plaintiff's hand then and there and thereby became caught in said machine and the fingers of the plaintiff's hand were then and there crushed and mangled and he was otherwise greatly hurt, bruised and wounded and the amputation of certain fingers of the plaintiff's hand then and there became necessary and the hand of the plaintiff as a result thereof, has become permanently disabled and disfigured and will continue to be crippled and useless for the rest of the plaintiff's life and he suffered great pain and anguish of mind and body and will in the future suffer great pain and anguish as a result of the injury to his said hand and he has been otherwise injured, and has sustained damages in the sum of Fifteen thousand dollars ($15,000.00).

For that whereas, on, to-wit April 26, 1907 and long prior thereto, the defendant, Sturges & Burn Manufacturing Company, a corporation, was engaged in the manufacture of tin-pails, buckets, boxes and other dairy utensils in the premises known as No. 249 South Green street in the City of Chicago, County of Cook and State of Illinois, and in the prosecution of its said business the said defendant made use of and operated certain machinery, which said machinery consisted of drills, presses, stamping machines and other devices, all of which were operated by steam power or electricity; and the plaintiff herein was employed by the defendant and was required by the defendant to work upon and about said machinery.

37 Further complaining the plaintiff charges that on to-wit, the date aforesaid, the defendant then and there had a certain machine in its said factory which was known as a stamping machine which said stamping machine was also operated by steam power or electricity and was used by the defendant in stamping certain sheets of tin into divers shapes and forms and the plaintiff herein was required by the defendant to place with his hands, certain sheets of tin into said machine and to remove with his hands certain sheets of tin from said machine after the same had been stamped.

Further complaining the plaintiff charges that the work then and there required by the defendant of the plaintiff in placing tins into said stamping press and removing the tins therefrom, was extra-hazardous and was dangerous to the life and limbs of the plaintiff and injurious to the health of the plaintiff and the plaintiff was then and there, on, to-wit, the date aforesaid, a minor of tender years, to-wit, fifteen years of age.

Further complaining the plaintiff charges that throughout all the

time the plaintiff herein was employed by the defendant in its said factory, and upon its said machinery, there was then and there in full force and effect throughout the City of Chicago, County of Cook and State of Illinois, a certain statute which was theretofore enacted by the legislature of Illinois, which said statute is known as Paragraph 14 of Chapter 48 and is in words and figures as follows, to-wit:

"Character of Work of Child Under Sixteen Limited.—No child under the age of sixteen years shall be employed, or permitted or suffered to work by any person, firm or corporation in this
38 State at such extra hazardous employment whereby its life or limb is in danger, or its health is likely to be injured, or its morals may be depraved."

And the plaintiff charges that the said defendant then and there on, to-wit, the date aforesaid, while the plaintiff herein was under the age of sixteen (16) years and in violation of the statute aforesaid, required, permitted and suffered the plaintiff to work at such extra hazardous employment that the life and limbs of the plaintiff were in danger and his health was likely to be injured and by means of the premises, while the plaintiff was as aforesaid in the employment of the defendant as aforesaid the fingers and hand of the plaintiff were crushed and mangled in a certain stamping machine and amputation of several fingers of the plaintiff's hand by reasons of the injury aforesaid, became and was necessary and the plaintiff was in other respects greatly hurt, crushed and wounded and his health has been injured and he has been and permanently will be disabled and disfigured for life and he suffered great pain and anguish of mind and body and has been otherwise injured and has sustained damages in the sum of Fifteen thousand dollars ($15,000.00). Wherefore he brings this suit.

ARTHUR BEAUCHAMP,
Plaintiff.
By NEPHTALI BEAUCHAMP,
His Next Friend.
By GEO. E. GORMAN AND
WILLIAM BIGANE,
His Attorneys.

And afterwards to-wit, on the 15th day of October, A. D. 1908, a certain pleas *was* filed in the office of the Clerk of said Court, in words and figures following to-wit:

39 STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

261,717. 17770.

ARTHUR BEAUCHAMP, by NEPHTELI BEAUCHAMP, His Next Friend,
vs.
STURGES & BURN MANUFACTURING COMPANY, a Corporation.

And the defendant, by Bulkley, Gray & More, its attorneys, comes and defends the wrong and injury, when, etc. and says, as to the third count of the plaintiff's second amended declaration filed herein on the 18th day of April 1908, that it is not guilty of the said supposed grievances above laid to its charge, or any, or either of them, in manner and form as the plaintiff has above thereof complained against it, and of this the Defendant puts itself upon the country, etc.

BULKLEY, GRAY & MORE,
Attorneys for Defendant.

And for a further plea in this behalf the defendant says, as to the third count of the second amended declaration filed herein on the 18th day of April, 1908, that the plaintiff ought not to have its aforesaid action against it, the defendant, because it says that the statute set forth in said count is unconstitutional and void, because it is in violation of that part of section thirteen, article four of the constitution of the State of Illinois, which provides:

"No act hereafter passed shall embrace more than one subject, and that shall be expressed in the title. But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed."

40 in that the subject of Section Eleven, set forth in said count is not expressed in the title of the act of which it is a part, said title being, "An Act to Regulate the Employment of Children in the State of Illinois, and to provide for the Enforcement thereof."

And this the Defendant is ready to verify.

Wherefore it prays judgment if the plaintiff ought to have its aforesaid action against it, etc.

BULKLEY, GRAY & MORE,
Attorneys for Defendant.

And for a further plea in this behalf the Defendant says, as to the third count of the plaintiff's second amended declaration, filed herein on the 18th day of April, 1908, that the plaintiff ought not to have its aforesaid action against it, the Defendant, because it says that the statute set forth in said count is unconstitutional and void, because in violation of that part of section one of the Fourteenth Amendment to the Constitution of the United States, which pro-

vides: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. Nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person, within its jurisdiction, the equal protection of the laws."

in that it deprives persons, firms and corporations of their property, viz: the right to contract for work, labor and services, without due process of law.

And this the defendant is ready to verify.

Wherefore it prays judgment if the plaintiff ought to have its aforesaid action against it, etc.

BULKLEY, GRAY & MORE,
Attorneys for Defendant.

41 And for a further plea in this behalf the Defendant says, as to the third count of the plaintiff's second amended declaration, filed herein on the 18th day of April, 1908, that the plaintiff ought not to have its aforesaid action against it, the defendant, because it says that the statute set forth in said count is unconstitutional and void, because in violation of Section two, article two of the constitution of the State of Illinois, which is:

"No person shall be deprived of life, liberty or property, without due process of law."

in that it deprives persons, firms and corporations of their property as follows, viz: the right to contract for work, labor and services, without due process of law.

And this the defendant is ready to verify.

Wherefore it prays judgment if the plaintiff ought to have its aforesaid action against it, etc.

BULKLEY, GRAY & MORE,
Attorneys for Defendant.

And afterwards to-wit on November 2nd A. D. 1908 certain proceedings were had and entered of record in said Court, to-wit:

261,717.

ARTHUR BEAUCHAMP, by, etc.,
vs.
STURGES & BURN MFG. CO. (a Corp.).

Case.

On motion of plaintiff's attorneys it is ordered that the defendant be and is hereby required to plead to the plaintiff's second additional count to declaration filed herein within seven days from this date.

And afterwards to-wit on the 9th day of November A. D. 1908, a certain Special Demurrer was filed in the office of the Clerk of said Court, in words and figures following to-wit:

42 STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No. 261,717. Term No. 17770.

ARTHUR BEAUCHAMP, by NEPHTALI BEAUCHAMP, His Next Friend,
vs.
STURGES & BURN MANUFACTURING COMPANY, a Corporation.

And the defendant, by Bulkley, Gray & More, its attorneys, comes and defends, etc. when, etc., and says that the first additional count to plaintiff's second amended declaration, filed herein October 14th 1908, and the matters therein contained, in manner and form as the same are above set forth, are not sufficient in law for the plaintiff to maintain his aforesaid action, and that it, the defendant, is not bound by law to answer the same, and this it is ready to verify.

And the defendant shows to the Court here the following causes of demurrer to the said count, that is to say:

First. The said count is too vague, general and indefinite for the defendant to take issue upon.

Second. The said count is pregnant with the meaning and inference that the plaintiff worked a considerable time at the machine upon which he was injured, and therefore was bound to know the defect and assumed risk.

Third. The said count is contradictory and repugnant in that it conveys the meaning that the machine, upon which plaintiff was injured, had been out of order for some time, during which time the plaintiff had been working upon said machine, and further alleges by way of conclusion, that the plaintiff did not have equal means with the defendant of knowledge of the defect.

43 Fourth. The said count is in other respects uncertain, informal and insufficient.

Wherefore, for want of a sufficient count in this behalf, the defendant prays judgment, and that the plaintiff may be barred from maintaining his aforesaid action, etc.

BULKLEY, GRAY & MORE,
Attorneys for Defendant.

And the defendant, by Bulkley, Gray & More, its attorneys, as to the second additional count of the plaintiff's second amended declaration, filed herein October 14, 1908, comes and defends, etc. when, etc., and says that the said count, and the matters therein contained, in manner and form as the same are above set forth, are not sufficient in law for the plaintiff to maintain his aforesaid action, and that it, the defendant is not bound by law to answer the same; and this it is ready to verify.

And the defendant shows to the Court here the following causes of demurrer to the said count, that is to say:

First. The statute set forth in said count is a part of an Act entitled "An act to regulate the employment of children in the State

of Illinois, and to provide for the enforcement thereof", approved June 9, 1897, in force July 1, 1897, which Act was repealed by an act entitled "An act to regulate the employment of children in the State of Illinois, and to provide for the enforcement thereof," approved May 15, 1903, in force July 1, 1903.

Second. The defendant is not charged with any negligence.

Third. The statute set forth in said count is in violation of Section Thirteen, Article four of the Constitution of the State of Illinois, which provides that, "No act hereafter passed shall em-
44 brace more than one subject and that shall be expressed in the title; but if any subject shall be expressed in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed," and the subject of the paragraph set forth in said count is not expressed in the title of the act of which it is a part, and is therefore void.

Fourth. The statute counted upon in said count is in violation of Section two, article two of the Constitution of the State of Illinois, and of section one of the Fourteenth Amendment of the Constitution of the United States, in that it deprives persons, firms and corporations of their property, viz: their right to contract without due process of law, and is therefore void.

Fifth. The statute counted upon, even if valid cannot be used as a foundation of a suit for damages. The damages suffered and sought to be recovered by the plaintiff, as set forth in the said count, are not the proximate result of the injury complained of, namely the violation of the statute.

Sixth. Said count is in other respects uncertain, informal and insufficient.

Wherefore, for want of a sufficient count in this behalf, the defendant prays judgment, and that the plaintiff may be barred from maintaining his aforesaid action, etc.

BULKLEY, GRAY & MORE,
Attorneys for Defendant.

STATE OF ILLINOIS,
County of Cook, ss:

Almon W. Bulkley being first duly sworn, deposes and says that he is one of the attorneys for the Defendant in the above entitled cause, and that in his opinion the foregoing demurrers are
45 well founded in point of law, and that the same are not interposed for delay.

ALMON W. BULKLEY.

Subscribed and sworn to before me this 9th day of November 1908.

[SEAL.] C. PAUL TALLMADGE,
Notary Public.

And afterwards to-wit on November 24th A. D. 1908, certain proceedings were had and entered of record in said Court, to wit:

261,717.

ARTHUR BEAUCHAMP, etc.,
vs.
STURGES AND BURN MANUFACTURING COMPANY, a Corp.

Case.

This cause coming on to be heard upon the demurrer to the first amended count of the plaintiff's declaration filed herein after arguments of counsel and due deliberation by the Court said demurrer is overruled to which the defendant excepts and on motion of defendant's attorney it is ordered that the defendant's plea of general issue now on file stand as plea to said amended first count and this day comes the plaintiff by his attorney and confesses the defendant's demurrer to the second count of his declaration and it is ordered that leave be and is hereby given the plaintiff to amend said second count within ten days from this date.

And afterwards to-wit, on December 8th A. D. 1908 certain proceedings were had and entered of record in said Court to wit:

261,717.

ARTHUR BEAUCHAMP, by, etc.,
vs.
STURGES & BURN MANUFACTURING COMPANY, a Corp.

Case.

This cause being called for trial come the parties to this suit by their attorneys respectively and issues being joined it is ordered that a Jury come whereupon come the jurors of a jury of good and lawful men to wit: Frank E. Mitchell, Charles W. Kicherer, Ernest Fisher, Paul Usemann, William M. Gardner, Peter Nelson, Frederick E. Herrick, Henry Koch, Mather C. Geiger, Charles A. Olson, William Klein and August W. Sterzing, who being duly elected tried and sworn well and truly to try the issues joined herein and a true verdict render according to the evidence and the hour for adjournment having arrived it is ordered that said jury be permitted to separate until tomorrow morning.

46

And afterwards to-wit on the 9th day of December A. D. 1908, a certain Verdict was filed in the office of the Clerk of said Court, in words and figures following to-wit:

We the jury find the defendant guilty and assess the plaintiff's damages at the sum of forty five hundred ($4500.00) dollars.

Frederick C. Herrick, Foreman.
Ernest Fischer.
Chas. A. Olsen.
Peter Nelson.

W. M. Gardner.
Chas. W. Kicherer.
Paul Useman.
William Klein.
Frank E. Mitchell.
Henry Koch.
M. C. Giger.
A. W. Sterzing.

47 And on towit on the 9th day of December A. D. 1908 a certain Special Finding was filed in the office of the Clerk of said Court, in words and figures following to-wit:

The defendant requests the Court to submit to the jury for answer the following question:

First. Do you find from a preponderance of all of the evidence in the case, that the plaintiff was under the age of sixteen years, at the time of the accident in question, as charged in the third count of the second amended declaration?

Answer: Yes.
Frederick C. Herrick, Foreman.
Ernst Fischer.
Chas. A. Olson.
Peter Nelson.
W. M. Gardner.
Chas. W. Kicherer.
Paul Useman.
William Klein.
Frank E. Mitchell.
Henry Koch.
M. C. Giger.
A. W. Sterzing.

And on towit on December 9th A. D. 1908, certain proceedings were had and entered of record in said Court to-wit:

48 261,717.

ARTHUR BEAUCHAMP, by, etc.,
vs.
STURGES AND BURN MANUFACTURING COMPANY, a Corp.

Case.

This day again come the parties to this suit by their attorneys respectively and the jury impaneled herein also come and thereupon the plaintiff enters his nolle-prosequi as to all counts except the third count of second amended declaration filed on the eighteenth day of April A. D. 1908 and the jury after hearing all the evidence adduced say:

We the jury find the defendant guilty and assess the plaintiff's damages at the sum of Forty five Hundred dollars and thereupon the

jury return their special findings submitted to them by the Court which is as follows to-wit: Do you find from a preponderance of all of the evidence in this case that the plaintiff was under the age of sixteen years at the time of the accident in question as charged in the third count of the second amended declaration?

Answer: Yes.

And afterwards to-wit on December 19th A. D. 1908 the same being one of the days of the December term of the Superior Court the following among other proceedings were had and entered of record in said Court, to-wit:

261,717.

ARTHUR BEAUCHAMP, by NEPHTALI BEAUCHAMP, His Next Friend,
vs.
STURGES AND BURN MANUFACTURING COMPANY, a Corp.

Case.

This cause coming on to be heard upon the defendant's motion heretofore entered herein for a new trial in said cause after arguments of counsel and due deliberation by the Court said
19 motion is overruled and a new trial denied to which the defendant excepts.

Thereupon the defendant enters herein its motion in arrest of judgment which motion is also overruled to which the defendant excepts.

Therefore it is considered by the Court that the plaintiff do have and recover of and from the defendant his said damages of Forty five hundred dollars in form as aforesaid by the jury assessed together with his costs and charges in this behalf expended and have execution therefor, to which the defendant excepts.

Whereupon the defendant having entered its exceptions herein prays an appeal from the judgment of this Court to the Appellate Court in and for the first district of Illinois which is allowed upon filing its appeal bond herein in the sum of Six thousand dollars to be approved by the Court within thirty days from this date and leave given the defendant to file its bill of exceptions herein within sixty days from this date.

And afterwards to-wit on the 6th day of January A. D. 1909 a certain Appeal Bond was filed in the office of the Clerk of said Court in words and figures following towit:

Appeal Bond—Appellate Court.

Know all men by these presents, That we Sturges & Burn Manufacturing Company, a corporation, and Frank Sturges of the County of Cook and State of Illinois, are held and firmly bound unto Arthur Beauchamp in the penal sum of Six Thousand dollars lawful money

of the United States, for the payment of which, well and
50 truly to be made, we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly by these presents.

Witness our hands and seals this 2nd day of January A. D. 1909.

The condition of the above obligation is such, That whereas the said Arthur Beauchamp did, on the 19th day of December A. D. 1908, in the Superior Court of Cook County, in the State aforesaid, and of the December term thereof, A. D. 1908, recover a judgment against the above bounden Sturges & Burn Manufacturing Company for the sum of Four thousand five hundred dollars and no cents, besides costs of suit; from which said judgment of the said Superior Court of Cook County, the said Sturges & Burn Manufacturing Company has prayed for and obtained an appeal to the Appellate Court, within and for the First District in said State.

Now therefore, if the said Sturges & Burn Manufacturing Company shall duly prosecute its said Appeal with effect, and moreover pay the amount of the judgment, costs, interest and damages rendered and to be rendered against it in case the said judgment shall be affirmed in said Appellate Court, then the above obligation to be void, otherwise to remain in full force and virtue.

STURGES & BURN MFG. CO., [SEAL.]
By FRANK STURGES, *Pres't.* [SEAL.]

MARCUS KAVANAGH, [SEAL.]
Judge Superior Court.

Attested:
By M. T. BURN, *Sec'y.*

O. K.
GEO. E. GORMAN, *Att'y for Pl'ff.*

51 STATE OF ILLINOIS,
County of Cook, ss:

Frank Sturges being first duly sworn, deposes and says that he is the owner in fee simple of the following described real estate, situated in the County of Cook and State of Illinois.

"Property on Western Avenue bounded by Western ave. 15th st. 15th place and Chicago Junction Ry. described as follows:

Ogden's Subdn. East half northeast quarter section twenty four (24) township thirty nine (39) range thirteen (13) T. M. Jordan's Re-sub lots 13-14-15-17-18. Value $50,000.

Property on west 63rd street and C. W. & I. Ry. 20 acres described as follows:

West half northeast quarter section twenty two (22) township thirty eight (38) range thirteen (13) Ex. Ry. & Ex. sts. Value $10,000.

Property on West 48th ave. and 55th st. 70 acres described as follows:

West half northwest quarter (Ex. Str. & Ex. Ry. & Ex. N. E. Quarter ,northwest quarter section fifteen (15) township thirty eight (38) and range thirteen (13) Value $35,000.00.

That the same are unencumbered, and not a homestead, and that he is worth over and above his debts and liabilities, the sum of One Hundred Thousand Dollars.

FRANK STURGES.

Signed and sworn to before me this 5th day of January, A. D. 1909.

[SEAL.] J. W. BECKMAN,
Notary Public.

52 And afterwards to-wit on the 27th day of January A. D. 1909 a certain Stipulation was filed in the office of the Clerk of said Court, in words and figures following to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

261,717. 17770.

ARTHUR BEAUCHAMP, Minor, by NEPTHALI BEAUCHAMP, His Next Friend,
vs.
STURGES & BURN MANUFACTURING COMPANY, a Corporation.

It is hereby stipulated and agreed by and between the parties to the above entitled cause, by their respective Attorneys, that the Clerk in making up the record for the Appellate Court, may insert the original bill of exceptions.

GEO. E. GORMAN,
Attorney for Plaintiff.
WM. BIGANE,
Attorney for Plaintiff.
BULKLEY, GRAY & MORE,
Attorney for Defendant.

And on to-wit on the 27th day of January A. D. 1909 a certain Bill of Exceptions was filed in the office of the Clerk of said Court, in words and figures following to-wit:

53 STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court.

ARTHUR BEAUCHAMP
vs.
STURGES & BURN MFG. CO.

Before Judge Kavanagh, December 8th, 1908.

Index.

Gray, Abbott & Williston, 514-520 Reaper Block, Chicago.
Telephones: Central 443, Automatic 3443.

54 STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County, November Term, A. D. 1908.

Gen. No. 261,717. Term No. 17770.

ARTHUR BEAUCHAMP, by NEPHTALI BEAUCHAMP, His Next Friend.
vs.
STURGES & BURN MANUFACTURING COMPANY, a Corporation.

Bill of Exceptions.

Be it remembered, That heretofore, to-wit: on the 8th day of December A. D. 1908, being one of the regular days of the above term of said Court, this cause came on for hearing before the honorable Marcus Kavanaugh, sitting on the common law side thereof, and a jury, upon the pleadings heretofore filed herein.

Appearances:

George E. Gorman, Esq., appearing for the Plaintiff.
Edward E. Gray, Esq., appearing for the defendant.

And thereupon the plaintiff to maintain the issues on his part introduced the following evidence, to-wit:

55 ARTHUR BEAUCHAMP the plaintiff herein, called as a witness in his own behalf, having been first duly sworn was examined and testified as follows:

Direct examination.

By Mr. GORMAN:

Q. State your name?
A. Arthur Beauchamp.
Q. You will have to talk loud enough so that all the jurors can hear you, How do you spell your name?
A. Arthur Beauchamp, B-e-a-u-c-h-a-m-p.
Q. Where do you live?
A. 2089 38th Place.
Q. How long have you lived in Chicago?
A. I was born in Chicago.
Q. On what date were you born?
A. May 3rd.

Mr. GRAY: I object to that.
The COURT: What is it?
Mr. GRAY: He is asking what date he is born on.

The COURT: He may state.
To which ruling of the court, defendant by its counsel, then and there duly accepted.
The COURT: What date were you born?
A. May 3rd.
Mr. GORMAN: What year?
A. 1891.
Q. Where were you born, where in Chicago?
A. In Brighton.
Q. What was the house number?
A. 3089 38th place.
Q. Have you ever lived in any other place except in Chicago?
A. No sir.
Q. You are the plaintiff in this case?
A. Yes sir.
Q. And on what date were you hurt?
A. The 26th of April.
56 Q. What year?
A. Two years ago, it is not two years yet.
Q. When will it be two years?
A. Well, the 26th of April.
Q. Next April?
A. Yes sir.
Q. You were hurt then on the 26th of April, 1907?
A. Yes sir.
Q. For what concern were you working at the time you were hurt?
A. Sturges & Burn Manufacturing Company.

Q. That is the defendant in this case?
A. Yes sir.
Q. How long had you been working for that firm before you were hurt?
A. About two weeks.
Q. When you went to work for the firm of Sturges & Burn at what kind of work were you assigned?
A. Punch press.
Q. What kind of a punch press *what* that?
A. Stamping and forming.
Q. How long did you work on that press?
A. About two days I guess it was.
Q. What was the next employment you had with this firm?
A. A smaller press, covers.
Q. Was that a stamping press too?
A. Yes sir, punching.
Q. A punch press?
A. Yes sir.
Q. How long did you work on that?
A. I ain't sure how long it is now.
Q. How many punch presses did you work on there before the day you were hurt?
A. Five the fifth one I got hurt on.
Q. What time of day was it when you were hurt?
A. A quarter to twelve.
Q. In the morning?
A. Yes sir.
Q. What time did you start work that morning?
A. About ten o'clock.
Q. What time did you go to the Sturges & Burn factory that morning?
A. Seven o'clock.
57 Q. From the time you arrived there at seven o'clock to ten o'clock did you do any work at all?
A. No sir.
Q. What were you doing at that time?
A. Sitting down beside the press.
Q. Along side what press?
A. This press I got hurt on.
Q. What was being done with the press at that time?
A. A man was putting it up, fixing it.
Q. Do you know who that man was?
A. No sir.
Q. Do you know the one who assigned you to work when you went to the Sturges & Burn place?
A. His name is Fred, that is as much as I know of him.
Q. Is that the man you met in the office?
A. No, sir, there is another boss over him but I do not know his name.
Q. Do you know who it was that was putting this press together while you were waiting for it?

A. Why, Fred's brother was helping on it, and a grey haired man, an old man was putting it up.

Q. Had you ever worked on that press before that day?

A. No sir.

Q. When you started to work on that press at ten o'clock what if any directions or instructions did you get?

A. Fred's brother sat at the press and made about a half a dozen of those, He said "Now, you see how it is done, do the same."

Q. How did that press operate?

A. By a foot pedal.

Q. Was it steam power or electrical power press?

A. Why a belt, I don't know just what it is.

Q. Belting on it, was it?

A. Yes sir.

Q. Shafting?

A. Yes sir.

Q. Now what were you making on that punch press?

58 A. I was forming a kind of covers, little covers, about six inches around, five or six inches round.

Q. What were those covers used for?

A. I don't know.

Q. How did you put them into the machine and take them out?

A. It was a sort of die you had to feed this plate into this die and press the lever and that would form it—take it out with the left hand and put it in with the right.

Q. What was the shape of this metal when you took hold of it to put it into the die press.

A. Flat.

Q. What shape was it when you took it out?

A. Kind of hollow like, it went in about a quarter of an inch, kind of a cover like.

Q. What sort of metal was it?

A. Tin I guess it was.

Q. Well, how long were you working on that before you were hurt?

A. About an hour and three quarters.

Q. And in what way did you get hurt?

A. By it repeating.

Mr. GRAY: I move that be stricken out.

The COURT: I didn't catch that answer.

(Answer read by the reporter.)

The COURT: Objection overruled.

To which ruling of the court, the defendant by its counsel, then and there duly excepted.

Mr. GORMAN: State what position you were in as to whether you were sitting down or standing up when you were hurt.

A. I was on the bench, a little bench, I was sitting on, working like that (indicating). The press was about that high (indicating).

Mr. GORMAN: Indicating a little below his shoulders.

Mr. GRAY: Was that the press.

59 Mr. GORMAN: What was it that was about that high?

A. The die where I set the place in and pulled it out.

Mr. GRAY: The bed of the press.

A. Yes sir.

Mr. GORMAN: What do you mean by repeating?

A. Why the time I had the plate in there pressing the pedal I was ready to pull it out—no, I was putting it in. I went to put it in and after pulling the other one out I went to place in the other one into the die and they came down again. When I heard the noise—it is a crank and makes a whole lot of noise. When I heard this I kind of glanced my hand out, but it caught three of my fingers, otherwise it would have caught my whole hand.

Mr. GRAY: I move that be stricken out.

Mr. GORMAN: Well, I will agree to that.

The COURT: The last expression may go out.

Q. How many times did the machine repeat?

A. Three times.

Q. What is that?

A. Three times.

Q. At the time you got your hand caught in the machine state whether or not your foot was on the pedal.

A. No sir, every time we pressed the pedal——

Mr. GRAY: Well, that answers it; you said no sir.

Mr. GORMAN: Tell the court and jury the manner in which you operate that pedal with your foot.

A. Press the pedal.

Q. What?

A. Just push down your feet on the pedal.

Q. Which foot did you use in pressing?

A. The right.

Q. When you pushed it down what did you do?

A. Removed it on the side.

Q. Just show your hand to the jury, the injured hand, turn it around so that they can see it.

(Witness exhibits injured hand.)

Q. The right hand is the one that is injured.

60 A. Yes sir.

Q. And the fingers that are gone are the index finger and the two fingers next to it?

A. Yes sir.

Q. So that there is only the smallest finger on the hand and the thumb.

A. Yes sir.

Q. Now, on your right hand.

A. Yes sir.

Q. Was your right hand, and all the fingers of it, in a normal condition before you were hurt?

A. Yes sir.

Q. Did you ever have your right hand hurt before this accident?
A. Yes sir.
Q. You may take your hand down.

(Witness thereupon takes his hand down.)

Q. What, if anything was done for you after your hand was hurt?
A. I didn't get that.
Q. What was done for you after your hand was hurt?
A. I was taken to the doctor.
Q. Who took you to the doctor?
A. This man named Fred.
Q. What was Fred's business?
A. He was the one that told the men to do things, worked around, order men there.
Q. Did you ever receive any orders from Fred?
A. Yes, sir.
Q. What, if anything, did Fred say to you about that machine after you were hurt?

Mr. GRAY: I object to that.
The COURT: Sustained.
Mr. GORMAN: Exception.

Q. State whether or not Fred said anything to you about the condition of the machine after you were hurt.

Mr. GRAY: I object to that.
The COURT: Sustained.
Mr. GORMAN: Exception.

Q. Do you know what doctor's office you were taken to?
A. Doctor Greenfield.
61 Q. His office is located where?
A. At Harrison & Halsted.
Q. Did you have any*thing* pain in your right hand during the time you were being taken to the doctor's office?
A. No sir.
Q. What was done for you at the doctor's office?
A. They chloroformed me.
Q. Do you know what the doctor did for you while you were there?
A. No sir.
Q. After you came to from the effects of the chloroform what did you notice about your hand?
A. It was in a big bundle, that is all I could see.
Q. Have you suffered any pain from it since the doctor dressed it?
A. I did not sleep for two nights.
Q. Why?
A. The pain, with the chloroform. I was weak.
Q. Has you right hand pained you any since then?
A. Yes sir, in the change of weather it pains.

Q. How much of the time do you have pains in it now, that is from the time you were hurt up to the present time?

A. As soon as the weather changes a little bit I can feel it; it feels as though my fingers were on and pins and needles sticking in the ends of them.

Q. Have you had any doctor treat your hand since Doctor Greenfield attended you?

A. Yes sir.

Q. What other doctor?

A. Doctor Bessette.

Q. How many times did you go to Doctor Greenfield's office?

A. Three times.

Q. Did he ever call at your house?

A. No.

Q. How many times did Doctor Bessete call at your house, if he called at all?

A. I called at his office.

Q. How many times?

A. I don't know.

Q. Have you any idea about it at all, was it once or twice?

A. It was quite a few times.

Q. What did Doctor Bessette do for your hand?

62 A. Dressed it and took stitches out and such things as that.

Q. Who put the sti-ches in your hand?

A. Doctor Greenfield.

Q. Do you know how many stitches he put in there?

A. I think the doctor counted eighteen.

Q. How long was it before you went back to work after your hand was hurt?

A. Oh, about four months I guess it was.

Q. What work did you start at then?

A. My father bought me a horse and wagon and I did a little expressing around the house.

Q. Are you still in the teaming business, driving, something like that?

A. Yes sir.

Q. Does your hand bother you in any way while at that work?

A. Yes sir.

Q. In what way does it bother you?

A. In gripping the lines now. If I have got a glove on I cannot hold the lines, I cannot hold the horse with that hand. The other hand is the hand I hold them with. I can grab the line that way (indicating) with the bare hand, but with the glove it is hard on me.

Q. Have you had any difficulty with your hand in any way other than you have already told us about?

A. In eating for the first place I cannot grab anything, I cannot use no knife.

Q. Is there any particular part of your injured hand that hurts you more than other portions?

A. Yes, there is a nerve there and if I bump that hand——

Mr. GRAY: I object to that.
The COURT: Overruled.
To which ruling of the court, the defendant, by its counsel then and there duly excepted.
The COURT: Go ahead.
Mr. GRAY: He don't know anything about nerves.
The WITNESS: There is a nerve sticking out there, if I attempted——

Mr. GRAY: I object to it, and move it be stricken out.
63 The COURT: Overruled; go ahead.
To which ruling of the court, the defendant, by its counsel, then and there duly excepted.
The WITNESS: *Q.* Quite a few times I have bumped it, and knocked it, and I may have to have it burned again and the doctor was saying——

Mr. GRAY: I move the entire answer be stricken out.
The COURT: Overruled.
To which ruling of the court, the defendant, by its counsel, then and there duly excepted.

Mr. GORMAN:

Q. When did you hurt that hand in that way, bump that nerve, who did you go to — have it burned?
A. Doctor Beessette.
Q. How many times have you done that?
A. Twice.
Q. When would your next birthday be after the date of this accident?

Mr. GRAY: I object to that.
The COURT: Overruled.
To which ruling of the court, the defendant, by its counsel, then and there duly excepted.

A. The third of May.

Mr. GORMAN:

Q. This accident happened on what date?
A. The 26th of April.
Q. Your birthday would be the third of May 1907?
A. Yes sir.
Q. How old would you be on that birthday?

Mr. GRAY: I object to that.
The COURT: The same ruling.
To which ruling of the court, the defendant, by its counsel, then and there duly excepted.

A. I believe sixteen.

Mr. GORMAN:

Q. You mean sixteen years of course?

64 A. Yes sir.

Q. When was the last time you had pain in your right hand?

A. Why, the last day I worked, that was a week ago Tuesday, a week ago Wednesday.

Q. Does the condition of your hand in any way affect your ability to write?

Mr. GRAY: I object to that.

The COURT: He may state.

To which ruling of the court, the defendant, by its counsel, then and there duly excepted.

A. Why, it bothers me if I got a pen or pencil, a new pen or pencil, it often turns over on me, and I will have to get hold of it with the other hand, and place it there when writing, and then I cannot write very fast; I have to go slow at it.

Q. And in writing you have to hold a pen and pencil between your little finger and a thumb?

A. Yes sir.

Mr. GORMAN: You may cross examine.

Cross-examination.

By Mr. GRAY:

Q. You say you were born in or about Chicago?

A. Yes, sir.

Q. Did I understand you have always lived in the same house where you now live?

A. Yes sir.

Q. You went to school did you not?

A. Yes sir.

Q. You are the oldest but one in the family, are you not?

A. Living.

Q. What time did you leave school to go to work?

A. Why, fourteen years old.

Q. What month did you first go to work in and what year?

A. I started in July for Goslin and McCormick.

Q. July what year?

A. 1907.

Q. You don't mean that. You mean 1906.

65 A. I mean in 1906, that is the first job I ever had.

Q. Let us get it straight.

—. Goslin and McCormick was the first job I ever had.

Q. The first place you ever worked was in July 1906.

A. I left school in June and I started right at Goslin & McCormick's grocery store.

Q. The first job you ever worked at was in July 1906; now, think of the year.

The COURT: Is that the first time you ever worked.

A. At Goslin & McCormick's.

Q. Was that in July 1906?

A. I ain't sure.

The COURT: He is not sure; go ahead.

Mr. GRAY: Have you in mind the year in which you were hurt?

A. Why——

Q. That was April 1907 wasn't it?

A. Yes sir, the 26th.

Q. What was their business, this firm, you say you first worked for.

A. Goslin & McCormick grocery store, market.

Q. Where is their place of business or was it then?

A. At 38th and California.

Q. What did you do there?

A. Clerk, delivery boy.

Q. How long did you keep that employment?

A. Eight months.

Q. Then where was your next position?

A. McCormick, they broke up; and this McCormick started a grocery store for himself.

Q. How long did you work there for McCormick

A. About two months.

Q. Then where did you go to work?

A. At the Fair then.

Q. The Fair at Adams and State?

A. Yes, sir.

Q. What department?

A. In the curtain department.

Q. Who was the man that was foreman there?

66 A. Why, there was Mr. Pine his name is.

Q. What floor were you on?

A. Fourth.

Q. How long did you work at the Fair?

A. Three weeks.

Q. Where was your next place of employment.

A. Kellogg's switchboard.

Q. They are on the west side?

A. Yes, sir.

Q. Do you remember what month and what year it was that you went to the Kellogg's switch company?

A. No, sir.

Q. You remember going there to work, do you?

A. Yes, sir.

Q. Do you remember the kind of work you did there?

A. Yes, sir.

Q. Do you remember the man that employed you?

A. No, sir.

Q. He asked you questions, did he not?

A. Yes, sir.

Q. He asked you where you had worked, and where you lived?

A. Yes, sir.

Q. And asked you your age?

—. No. sir.

Q. You are sure of that?

A. Pretty sure.

Q. Tell us what you said you were when you asked for employment.

Mr. GORMAN: I object to that.

The COURT: Oh, he may answer. What did he say?

Mr. GORMAN: This is at the Kellogg's switchboard.

Mr. GRAY: Yes.

Mr. GORMAN: Exception.

A. You are in a line, and when my turn came he said to me, "What kind of work do you want," I says, "Any kind, so I go to work, so he took my name and address and says to one of the men there, "Here is a card—go with him."

Q. Was that all that was said there?

A. Yes sir.

67 Q. Simply asked your name and address?

A. Yes sir.

Q. Is that all he asked you?

A. Yes, sir.

Q. He didn't ask you where you had worked before?

A. No, sir.

Q. He didn't ask you how long you had been working?

A. No, sir.

Q. You gave him your name and address, didn't you?

A. Yes sir.

Q. Did you see it written down?

A. Written on a card, my name.

Q. Did you see the man write?

A. Yes sir.

Q. Would you know the card again if you saw it?

A. Yes, sir.

Q. What was the business of the Kellogg Switchboard Company?

A. Electric work.

Q. They have punch presses in there, haven't they?

A. Yes, sir.

Q. You went to work on a punch press, didn't you.

A. No sir.

Q. Didn't you work on a punch press while you were with the Kellogg switchboard?

A. Yes sir.

Q. How long were you there before you worked on a punch press?

A. About three months and a half.

Q. How long were you there altogether?

A. About four months.

Q. How long did you say you worked on the punch press?

A. About two weeks.

Q. Is that the kind of a press you worked on at Sturges & Burn?

A. Smaller.

Q. The same kind but smaller?

A. Yes sir.

Q. Operated the same way?

—. Yes, sir.

68 Q. Then you left the Kellogg Switchboard suddenly, you gave no notice, you left right away, do you remember that?

A. Yes, sir.

Q. And the Sturges & Burn Manufacturing Company are right next door to the Kellogg people, are they not?

A. About half a block.

—. The Kellogg runs to the corner, and Sturges & Burn start across the way.

A. Yes, sir.

Q. No buildings in between that you recollect?

A. No, sir.

Q. When was it you applied for work at Sturges & Burn Manufacturing Company, the defendant here?

A. I don't remember.

Q. Can't you give us the month or the year?

A. Why, it was in April.

Q. What part of the month?

A. I don't know.

Q. You don't know whether it was the first, middle or end of the month, is that right?

A. Why, it was around the eighth or tenth somewhere, around in there, because I was only there two weeks, something like that.

Q. In what manner did you apply for work at Sturges & Burn Manufacturing Company?

A. There was a big crowd, and this boss——

Q. What do you mean by a big crowd, a thousand people?

A. That is, it is a small place where they hire, and it was crowded in there, and that is why I say a big crowd.

Q. How many people?

A. Oh, about twenty.

Q. All right.

A. And we were all waiting there for a job, and there is a window there near the door, and this foreman or boss came up to me and says, "Did you work on a punch press before?"——

Q. What is that?

A. He came up to me, got me by the hand and says, "Did
69 you work on a punch press before?" I says, "Yes," He says "Go inside." I gave him my name. He says "What is your name and address," and he says to Fred, "Put that fellow to work," and I walked down stairs with him and he put me on the first big punch press there was, a story-high punch press.

Q. Have you given us all that you remember as being said when you were hired?

A. Yes, sir.

Q. Wasn't your name asked?

A. That is what I say, my name and address.

Q. Is that all that was asked?

A. Yes, sir.

Q. Didn't they ask you where you had worked.

A. Not when I was hired.

Q. They asked you if you had worked on a punch press.

A. Yes sir.

Q. You said yes?
A. Yes, sir.
Q. Did they ask you where?
A. No, sir.
Q. Did they ask you your age?
A. No, sir.
Q. Sure about that?
A. Yes, sir.
Q. There were two men there when you were being asked these questions you say Fred and the other man.
Q. Fred was in the office, and this fellow was right at the door.
Q. The door of the office?
A. Yes, sir.
Q. You saw Fred at that time?
A. That is Fred was over quite a little.
Q. You saw him did you?
A. When he told me to go to work, "Put this fellow to work," he says, "Here, Fred, put this fellow to work."
Q. You were not asked your age?
A. Yes, sir.
Q. You are sure about that?
A. Yes sir.
Q. You were not asked your age at the Kellogg Switchboard?
A. Yes, sir.
Q. You were not asked it?
A. No, sir.
70 Q. Did anybody ever ask your age where you went to work?

Mr. GORMAN: I object to that, it is immaterial.
The COURT: Sustained.
To which ruling of the court, the defendant, by its counsel then and there duly excepted.

Mr. GRAY:

Q. Did you ever state your age to any person where you went to work?
A. I did at the Fair.
Q. At the Fair?
A. Yes, sir.
Q. What age did you give?
A. I showed them my school certificate.
Q. You had a school certificate?
A. Yes, sir.
Q. Have you got that with you now?
A. Yes, sir.
Q. Is that the one you left at the Fair?
A. No, I got a copy.
Q. Have you the original certificate that you had with you when you went to the Fair, have you that with you?
A. I have had it at home. My mother put it away some how or

other. I had to go back to school to get a copy of this school certificate I had before.

Q. That original got lost?

A. Yes, sir.

Q. Is that the only place where you ever presented a certificate at the Fair?

A. Yes, sir.

Q. You did not have one for this grocery place?

A. No, I am well acquainted with those people.

Q. You went from the Fair to Kellogg's Switchboard?

A. Yes, sir.

Q. You had no certificate to present there?

A. I didn't need any, I was not asked.

Q. You knew you didn't need any?

A. I was not asked for any.

Q. You knew——

A. I knew, I did not; I was not asked for it.

Q. You knew, being past sixteen years old you did not need a certificate, didn't you?

Mr. GORMAN: I object to that.

71 The COURT: Yes.

Mr. GRAY: I wouldn't have asked it but he said he didn't need one.

The COURT: Yes, but he has explained what he meant.

Mr. GRAY:

Q. Any way you didn't have one, you didn't have one with you when you applied for the position?

A. No, sir.

Q. You didn't take one there?

A. No, sir.

Q. They didn't ask for one?

A. No, sir.

Q. How many different punch presses did you work on at the Kellogg switchboard?

The COURT: I think we will take our recess.

Gentlemen of the jury, you will remember in every case the jurors are admonished not to talk about the case and not to permit anyone to talk in your presence concerning it and refrain from forming any judgment until the case is finally in, and come back at two o'clock.

Whereupon an adjournment was taken until 2 o'clock P. M. of the same day, Tuesday, December 8, A. D. 1908.

TUESDAY, *December* 8, 1908—2 o'clock p. m.

Court met pursuant to adjournment;
Present; same as before.

ARTHUR BEAUCHAMP, the plaintiff herein, having been heretofore duly sworn, resumed the stand for further cross examination by Mr. Gray, and testified as follows:

Q. How old were you when you worked at the Fair?
A. I don't remember.
Q. How many years ago is it since you worked at the Fair?
A. I don't remember at all.
Q. Do you remember their giving you an application to fill out and sign before you got your position?
72 A. No, sir.
Q. You don't remember that?
A. (No response.)
Q. From the Fair you went to the Kellogg Switchboard people, did you?
A. Yes, sir.
Q. Speak up.
A. Yes sir.
Q. Then to Sturgess & Burn?
A. I ain't sure whether I went right to Sturges & Burn or not.
Q. When was it that you worked for the General Electric?
A. (No response).
Q. What year was it I don't care about the month what year was it,
A. The year I worked at the Fair I don't remember just what year it was.
Q. You don't know whether that was 1905 or 1906?
A. No, sir.
Q. You don't remember?
A. No, sir.
Q. Speak up.
A. No, sir.
Q. How long did you work at the General Electric?
A. Four months.
Q. What did you do there?
A. Inspector.
Q. Inspecting what?
A. These strings, electric strings, telephone strings.
Q. How much did you get there? How much did they pay you?
A. If I am not mistaken it was four dollars a week.
Q. And you got more than that at the Kellogg switchboard?
A. That is what I mean, that is what I am speaking about.
Q. Four dollars at the Kellogg's?
A. Yes sir.
Q. You left the Kellogg people at four dollars a week and went to Sturges & Burn.
A. I work down stairs on the punch press.
Q. At the Kellogg switchboard?

A. Yes, sir.
Q. You left the Kellogg switchboard at four dollars a week to go to Sturges & Burn.
73 A. The punch press business pays more than inspecting.
Q. What did they pay you on the punch press on the Kellogg switchboard?
A. It was piece work.
Q. About how much did you make there?
A. On an average of a dollar and a half a day.
Q. They paid you nine dollars a week at Sturges & Burn didn't they?
A. Yes, sir.
A. Yes, sir.
Q. And you hired out as a punch press man, didn't you?
A. Yes sir.
Q. You say that a man named Fred put you to work?
A. Yes, sir.
Q. When you say he put you to work you mean the first time you went to work there?
A. Yes, sir.
Q. Do you remember what machine it was that you worked on the first time you went to work for Sturges & Burn?
A. The first machine as I came in the door off the stairs.
Q. Was that the punch press?
A. Yes, sir.
Q. I thought you said you worked on about five different presses?
A. Yes, sir.
Q. For Sturges & Burn?
A. Yes, sir.
Q. Some were smaller than the press you got hurt on, and some were larger?
A. There ain't any larger than the one I got hurt on.
Q. There are larger ones in the room, are there not, larger presses?
A. They are the same size.
Q. The same size?
A. Yes, sir.
Q. What day was it you first worked on the press you got hurt on?
A. The day I got hurt on.
Q. Sure about that?
A. Yes, sir.
Q. So that you worked on four of the presses before you worked on that?
A. Yes, sir.
Q. Did you use your hands the same way on all those presses?
A. In that same kind of die.
Q. Did you use your hands to put in the work under the die, whatever die it was.
74 A. Sure, the first press I ever worked on.
Q. Always put your hands underneath?

A. Yes, sir.
Q. You say you were instructed how to do the work?
A. Yes, sir.
Q. You were instructed on other presses you worked on how to do it?
A. Yes, sir.
Q. Were you not?
A. Yes, sir.
Q. Isn't it true that you were given a stick on every machine you worked, with which to put in and take out the work, isn't that true?
A. I don't know what you mean.
Q. You know what a stick is, when you see a stick of course you know it.
A. Not me.
Q. Did you ever see anything like that (handing witness stick)?
A. I don't remember ever seeing any.
Q. Did you ever see a stick like that?
A. No, sir.
Q. Not in that factory at all?
A. No sir. Never used them.
Q. Did you ever use one like that?
A. No, sir.
Q. Why did it take you so long to examine it?

Mr. GORMAN: I object to that.

A. I was just thinking it over to see if I ever saw one, and looked at it.

Mr. GRAY:

Q. Did you ever see a stick with a piece of rubber on the end of it like that?
A. No, sir.
Q. Wasn't there one furnished at every press that you worked on, a stick similar to that?
A. No sir.
Q. Do you know what that rubber is on the end for?
A. No, sir.
Q. You undertook to describe this morning the piece of work that you had in the machine at the time you were hurt didn't you?
A. Yes, sir.
75 Q. You said this work you put in on the bed for the punch to come down on it with your right hand, and you took it out with your left, that is what you said.
A. Yes, sir.
Q. And you said at the time you were hurt you were putting in some of this work?
A. Yes sir.
Q. And that the punch repeated, came down three times?
A. Yes sir.
Q. And hit you?
A. Yes sir.
Q. Did the punch strike you three times?

A. The first time it came down it came down once and repeated on me and when it came up again I pulled my hand out.

The COURT: Did it strike you the first time?

A. No, sir.

Mr. GRAY:

Q. It didn't strike you the first time?
A. No sir.
Q. Then it went up again?
A. Yes, sir.
Q. Then it came down again?
A. Yes, sir.
Q. Then it hit you?
A. Yes sir.
Q. Then went up again and came down again?
A. Yes sir.
Q. For three times?
A. Yes, sir.
Q. You kept your hand there all the time?
A. No, sir, I pulled it out the second time after it came down the second time.
Q. How long did it take it to go up and it came down the first time and did not strike you, how long did it take it to go up and come down again, and your keeping your hand in there all the time.
A. It repeated; it goes up like that (indicating).

Mr. GRAY: I would like to have the Court see that.

Q. Show the court and jury how it acted.

76 A. It raised up like that (indicating).

Q. You have given the speed now, haven't you, just about the speed?
A. Like that (indicating).
Q. It comes down like that (indicating)?
A. Yes, it comes down a little faster. It goes up that way and because it goes——
Q. You went up this way before (indicating), now you go up this way (indicating) now, show us.
Q. It comes down this way (indicating) on a steady gait all the time.
Q. When you were working there for two or three hours as you say, you were giving us how that thing worked, the speed and so forth; I don't mean at the time you say it dropped and repeated, but give us the ordinary speed of that machine, how it works.

The COURT: You can show with your hand how fast it went up and how fast it went down.

Mr. GRAY: Yes.

The COURT: Give us the motion of your hand about the speed with which it went up and came down before you were hurt, if you can.

A. After that pedal is pressed, the press comes down; while it comes down of course it is heavier; it will come down about like that (indicating); it will come up and then come down again.

Mr. GRAY:

Q. You have given us the speed of that machine now: is that what you say was the speed of it?

A. Of course the speed I could not say exactly.

Q. Now, you sat at a bench you say?

A. Yes sir.

Q. Just as if this table in front of me was a machine.

A. Yes sir.

Q. You sat on a bench and you were on a level with it?

77 A. About like that (indicating).

Q. You had plenty of room to work?

A. Yes, sir.

Q. And you took your own time about it?

A. Yes, sir.

Q. You had worked there two or three hours before you were hurt?

A. An hour and three-quarters.

Q. It had not repeated during that hour and three-quarters?

A. No, sir.

Q. It worked all right?

A. Yes, sir.

Q. Do you remember the piece you had in the machine—look at that and see if that looks like it (handing witness piece of tin). Do you see those indentations there, the little marks, do you think you had your hand there and your fingers at the time (indicating)?

A. Is my fingers going to make holes in it that way?

Q. I ask you if you know?

The COURT: Did you ever see that before?

A. No, sir.

Q. You are sure that was not in the machine when you got hurt this identical piece of tin?

A. I was putting something, that must be the piece I put in.

Q. You think it is the piece?

A. Yes, I could not say for sure.

Q. No.

The COURT: It was something like that?

A. It was a piece of tin like that, it forms that way.

Mr. GRAY: Is this the shape when it comes to you?

A. Yes, sir.

Q. Supposing this is the machine (indicating) and you are sitting down, show us how you put that in.

A. Here is the machine, and you had to take and put this into a guage like to feed it in, otherwise it would make a clip just like that. You had to feed it into the guage. After you got it into the gauge, press your lever, and it come down and formed it. Pull it out with this hand and slap it in with the other hand, an other piece.

78 Q. Slap it in?

A. Put it in and see that it is in the guage.

Q. This is the shape of the tin when it comes to you?

A. Yes, sir.

The COURT: Now, show us how it happened, so that these gentle

men can see it; turn it around here and let this be the machine (indicating) put it in there, you put it in.

A. There is the *guage* (indicating). You take a piece like that and you slap it into the *guage*; it is a round *guage*, you got to fit it into that; after it is fitted in there, you press your lever, and at that time you get another one and pull this out and slap in another one in place of the one that is formed.

Q. Now, at the time in question, at this time in question when you got hurt, you put in this one, did you, you put in that piece of metal (indicating)?

A. Yes sir.

Q. You put in the piece of metal and this came down and stamped it?

A. Yes, sir.

Q. Then what did you do?

A. I took this one out and was putting in another one, and it repeated on me.

Q. As you were putting in the other?

A. Yes, sir.

Q. All right; go ahead.

Mr. GRAY: Now, you were describing a tin cover, having put this in the machine, when the press comes down it is taken out in that shape, isn't it?

A. Yes sir.

Q. Comes out this shape?

A. Yes sir.

Q. Isn't it true this stock was furnished you, a stick exactly like this to do that?

A. No, sir.

Q. If this was the piece of tin you had put in at the time you were injured, what have you to say as to this being in that shape, what caused it to be that shape?

79 A. You grab it like that (indicating); I wish I had my whole fingers. It will come out like that (indicating).

Q. Now, describe how you were doing it.

A. I cannot hold it with that hand. I cannot hold it the way I ought to.

Q. Tell us about it.

A. Just like that (indicating) that is the way you must feed it into that *guage*. If it is not fitted in that *guage*, it will make a clip just like that.

Q. When you feed that into the *guage*—you remember these presses, remember enough about the workings of them to say whether these are the parts.

A. I could not very well see that part (indicating), but I remember that (indicating).

Q. What was it that came down on that? It was this inside piece wasn't it that flattens it, came down on the top there that way (indicating). It went up and came down.

A. I could not say for sure if that was it, I could not see that.

Q. This machine did not work at all, did it until you put your foot on the treadle.

A. No sir.

Q. You had to work it with your own foot?

A. Yes, sir.

Q. And you sat at a little table on the bench, as you are sitting now in the witness chair, was it a chair?

A. Stool like.

Q. Yes, a stool like.

A. Yes, sir.

Q. And with your right foot you press down on this treadle?

A. Yes, sir.

Q. Then this part I have just shown you gradually descended (watch my hands) like that (indicating), and then went back again, and then the machine stopped, that is true, isn't it?

A. The machine did not stop at all.

Q. Now, listen; you said a minute ago it did not go until you put your foot on that.

The COURT: He is not talking about the time you got hurt, but before you got hurt.

80 The WITNESS: I see.

The COURT: Did it come up as slow as he said or faster or how?

A. I could not say whether it went faster or not, but I know it went up that way (indicating) and stopped.

Mr. GRAY:

Q. It went up the way I figured it?

A. Yes sir.

Q. You will not say it went any faster than that, will you?

A. I could not say.

Q. Then it descended; it did not descend until you put your foot on it, did it?

A. Not any other time.

Q. Not any other time?

A. No, sir, not until I got hurt.

Q. All morning you worked on it, or an hour and three quarters, you have been turning out those things, had you not?

A. Yes sir.

Q. And you say the machine worked all right?

A. Yes, sir.

Q. Nothing wrong with it at all?

A. No, sir.

Q. No suspicion of anything wrong?

A. (No response).

Q. You had no suspicion there was anything wrong, did you?

A. Well, just about a quarter to eleven about eleven o'clock or a quarter after, the fly wheel, on the side,—you know what the fly wheel is—was away off pretty nearly off the shaft.

Q. Who did you say anything to about that?

A. To the machinist, Fred's brother.

Q. You did?

A. Yes, sir, when I noticed that I stopped the belt. I says to Freed's brother, I called him over and I says, "Look at that machine, was that inspected?"

Q. Was that inspected.

A. Yes, I says "I would not have a machine running unless it was inspected." He came over to me and says—why, I says, "Look at that shaft." The wheel was away over, the pin that holds that wheel on was off. He says "You are the luckiest fellow I ever see."

So he fixed it and I went to work with it right after that.

81 Q. Fixed it all right?

A. Fixed it all right and I went to work on it after that.

Q. Worked all right after that.

A. Until I got hurt.

Q. No suspicion after that there was anything wrong with it?

A. No, sir.

Q. You knew if you got your hand in there in this space where this tin is, and under this die that came down, you would get hurt, didn't you?

A. If it came down on me certainly.

Q. Certainly you knew that?

A. Yes, sir.

Q. So that let us have it understood in order to work this machine at all you had to put your foot on the treadle.

The COURT: He said so repeatedly.

Mr. GRAY: Did you have your foot on the pedal at all when it worked three times up and down, up and down?

A. No, sir.

Q. You did not have your foot on it at all?

A. No, sir.

Q. Did you have your hand where I have mine when you say the die came first and did not hit you, did you have your hand where I have mine now (indicating)?

A. Came down without hitting me.

Q. You say the die came down and did not hit you?

A. I had my plate in and had my hand away from it. It went up there and stayed up there.

Q. You did not have your hand in there?

A. I had to slap in the first one.

Q. We have the tin in now?

A. Yes sir.

Q. We have the tin in?

A. Yes, sir.

Q. Did you have your hand on it when the die first came down and did not hit you?

The COURT: Do you mean he did have?

82 The WITNESS: No sir, I did not have my hand on it when it first came down.

Mr. GRAY:

Q. Did you see it come down without your foot on the treadle, did

you see it come down when you did not have your foot on the treadle to start it?

A. No sir.

Q. I do not understand these three times repeating. I wish you would tell us about that, explain what you mean, how it should repeat if you did not have your foot on the treadle, and do it three times.

A. (No response).

Q. You say it came down?

A. Yes sir.

Q. Without your foot on the treadle?

A. The first time I pressed my foot on the pedal for it to come down. I pulled that plate out when it came up, and I was slipping the other one in there when the thing came down upon my fingers.

Q. Did it come down after it struck you?

A. After it struck my fingers it kept on working, it came down again.

Q. You left it that way whirling around and doing all sorts of funny things.

A. Well, it came down once. After I got hurt, I walked away——

Q. That die comes down—when the die comes down it is that way (indicating)?

A. Yes, sir.

Q. You say it was Fred's brother that put you on that machine that morning?

A. Yes, sir.

Q. And gave you this work to do?

A. Yes, sir.

Q. Did he tell you to put your hand in there and work with your hand?

A. Yes, sir.

Q. Tell you to do that?

A. Yes, sir.

Q. Did he do it that way?

A. Yes, sir.

Q. You never saw that stick, you say?

A. No sir.

83 Q. What other work had you done of this character during the two or three weeks that you were working there, what was the character of the work you did?

A. I don't know what you mean?

Q. What I mean——

The COURT: He means what kind of work did you do?

Mr. GRAY:

Q. This is what we call a cover, a cover for a can?

A. Yes sir.

The COURT: What other work had you done there, what kind of work?

A. There was some work I did there I think it was the neck of a

milk can, you slap in a *guage*—that is the first press I ever worked on.

Mr. GRAY:

Q. In that place you mean?
A. In Sturges & Burn.
Q. That was pressing the neck of cans.
A. Yes sir.
Q. You put this over a bed like this (indicating) and the die comes down on it?
A. Yes, sir, and forms it.
Q. Presses it the same?
A. Yes, sir.
Q. You always used your hands, did you?
A. Yes, sir.
Q. Always used your hands, did you?
A. Yes, sir.
Q. You said this morning, I think you said you had a sister who is older than you are?
A. Yes, sir.
Q. Is she the next child to you, was she born next to you?
A. No sir, there is a girl in between us, dead.
Q. How much older was she than you?
A. I could not say just exactly; it is in the book.
Q. I don't care about the book. Don't you know how much older she was—what was her name, did she ever have a name.
A. Neticella.
Q. How much older was she than you?
A. About a year; my sister that is living is now twenty-
84 one.
Q. You think if she was living she would be about twenty?
A. About nineteen I guess.
Q. You are how old now?
A. Seventeen.
Q. Then the one younger than you is sixteen years old?
A. Yes sir.
Q. Isn't she?
A. Going to be sixteen.
Q. She is in her sixteenth year?
A. Yes sir.
Q. She will be sixteen in February?
A. Yes sir.
Q. Do you know how many children have — born since you were born?
A. There is eleven living.
Q. About three dead?
A. About three dead.
Q. What school did you go to?
A. I went to the Sisters' school first.
Q. Did you have to register or do anything about your age?

A. I was baptized in the church.
Q. What church were you baptized in?
A. St. Joseph's.
Q. Have you been to the priest for a record at all?
A. He ain't got it. The priest that baptized me is dead and they ain't got the record.
Q. You know there is no record in any church of your baptism, you have looked for that?
A. Yes sir.
Q. Have you been to the county clerk's office, you or your family, to look for any record of your birth?
A. Not me.
Q. You have not been there yourself?
A. No.
Q. Do you know whether any search has been made to your knowledge?
A. No sir.
Q. Where was the last place you furnished to any employer any evidence of your age?
85 A. The Fair.
Q. And what was that evidence?
A. School certificate.
Q. Do you know what age that stated you to be at that time?
A. Fourteen years and one month.
Q. You are sure about that?
A. Yes, sir.
Q. Did you ever go back to Sturges & Burn after you were hurt?
A. Went back for my pay.
Q. When was that?
A. Oh, about a week after I was hurt I guess.
Q. A week after you were hurt?
A. Week or two.
Q. You never were confined to the hospital except at the time you went there first? You went home again after the operation?
A. Five o'clock, I reached home at five o'clock.
Q. That same afternoon?
A. Yes, sir.
Q. And were out every day after that weren't you?
A. I was not out for three or four days after that, more than that.
Q. Three or four days?
A. I don't remember exactly how long it was.
Q. You say your father got this horse and wagon and you have been expressing ever since?
A. Yes sir.
Q. What sort of expressing do you do?
A. Coal and wood and expressing.
Q. What is that?
A. Expressing at depots, moving and such stuff as that.
Q. Handle trunks?
A. Yes, sir.

Q. You do not take anybody in the wagon with you?
A. Quite often.
Q. What?
A. Sure, lots of times.
Q. When somebody wants a ride?
A. Yes, sir.
Q. There is nobody employed on the wagon?
A. No sir.
Q. You do all that work yourself?
A. Yes, sir.

Q. You have not laid off for a long time, you have worked
86 steadily.

A. The little work that I did expressing, before I started that I was about three or four months idle.
Q. Since then you have worked steady?
A. No, not steady.
Q. Whenever you have had work you worked?
A. Sure.
Q. Where did you say you lived?
A. 38th Place.
Q. Was that ever known as Joseph street?
A. Yes sir.
Q. What?
A. Yes sir.
Q. Do you remember how many years ago it was changed?
A. I don't.
Q. Did you say Fred took you to the doctor?
A. Yes, sir.
Q. Is that Fred (indicating)?
A. Yes sir.
Q. Is that the man that took you to the doctor?
A. Yes sir.
Q. Is that the man you say put you to work on this machine the morning you got hurt?
A. He is the man that gave the order to.
Q. Is he the man that put you to work on the machine and showed you how to do it?
A. His brother.
Q. You say it was his brother?
A. His brother.
Q. Did you talk to Fred that morning while you worked at all?
A. No sir.
Q. Then he is not the Fred that you say you called attention to the condition of this shaft up there.
A. His brother.
Q. His brother?
A. Yes, sir.
Q. So that you did not talk to Fred that morning?
A. He is the Fred that gave the orders to go to work, putting on the work.
Q. I am asking about you; he is not the man that put you on that machine that morning, is he?

87 A. He is the man that told his brother to put me on that machine.

Q. This man was over his brother?

A. Sure.

Q. It was the brother that took you to the machine and showed you how to work it?

A. Yes sir.

Redirect examination.

By Mr. GORMAN:

Q. Look at this paper and state whether or not you know what that is, yes or no.

A. What will I do?

Q. Do you know what it is, yes or no?

A. Sure.

Q. Where did you get that and when?

A. At the Buryl school.

Q. When did you get that?

Mr. GRAY: I object to that; I am entitled to see it.

The COURT: He is not offering it.

Mr. GORMAN: When did you get it?

A. Here just about a week ago I guess it is, about a week and a half ago.

Mr. GORMAN: Now, I will offer that in evidence, if the court please and ask that it be marked Plaintiff's Exhibit A.

Mr. GRAY: I object to it. It is marked duplicate there; there does not appear to be any originality about it.

The COURT: Is that the only objection that it is a duplicate?

Mr. GRAY: It is hearsay evidence; it is not identified.

The COURT: Sustained.

Mr. GORMAN: Exception.

Q. Did you see the original school certificate that was issued to you?

Mr. GRAY: I object to that.

The COURT: Overruled.

To which ruling of the court the defendant, by its counsel, then and there duly excepted.

A. Yes, I have had it.

Mr. GORMAN: Do you know whether or not this is a correct copy of that original school certificate that was issued to you?

88 Mr. GRAY: I object to that.

The COURT: I think it is immaterial. It would not be competent. The original school certificate would not be competent.

Mr. GORMAN: I know it would not on my side of the case, but it was inquired of by the defendant on cross examination and I think he has in that way let the bars down.

The COURT: I think not.

Mr. GORMAN: Exception.

The COURT: Objection sustained.

Mr. GORMAN: I will ask that it be marked Plaintiff's Exhibit A for identification.

Whereupon said document was marked by the Reporter, Plaintiff's Exhibit A, for identification.

Mr. GORMAN:

Q. When Mr. Gray asked you this morning what year it was when you started to work do you remember now what year it was, or did you want to make any corrections in what you then said to him?

A. Yes sir, I think I told him 1906.

Q. When was it?

A. It was when I got—two weeks before I got this school certificate.

Mr. GRAY: I move that answer be stricken out.

The COURT: It is overruled

To which ruling of the court, the defendant, by its counsel, then and there duly excepted.

Mr. GORMAN:

Q. When did you get that school certificate.

Mr. GRAY: I object to that.

The COURT: Overruled.

To which ruling of the court, the defendant, by its counsel,
89 then and there duly excepted.

The COURT: What year, 1903?

A. 1905.

Q. 1905?

A. Yes, sir.

Mr. GORMAN:

Q. Now, this man to whom you spoke when you directed the attention, or directed his attention to the fact that the machine was out of order in some way, is that the man that went with you to the doctor's office.

A. No, his brother.

Mr. GORMAN: I want to make the offer I wished to make this morning.

The COURT: The same objection to it I suppose. The objection is sustained; stand aside. Call another.

Mr. GORMAN: I want to make the offer so that the record will show.

The COURT: Yes, you may but not within the hearing of the jury.

Mr. GORMAN: I offer to prove by the plaintiff that when he was on the way to the doctor's office, the man who went with him, he being the same man who directed him to go to work on this machine, and showed him how to go to work on it, and the man from whom he took his orders, said to him in substance, "I know that machine

was not all right, but I thought it would last until that job was finished."

The COURT: You object to it.

Mr. GRAY: Yes, your Honor.

The COURT: Objection sustained.

Mr. GORMAN: Exception.

The COURT: Objection sustained.

Mr. GORMAN: Exception.

Mr. GORMAN: I desire to have this marked for identification.

Whereupon said certificate was marked by the reporter, Plaintiff's Exhibit A, for identification.

90 NEPHTALI E. BEAUCHAMP, a witness called in behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. GORMAN:

Q. What is your name?
A. Nephtali E. Beauchamp.
Q. Where do you live?
A. 2089 38th Place.
Q. Speak louder?
A. 2089 38th place.
Q. How long have you lived in Chicago?
A. It will be 25 years next March.
Q. Where were you married?
A. Canada.
Q. How old is your son, Arthur Beauchamp?

Mr. GRAY: I object to that.

The COURT: Overruled.

To which ruling of the court, the defendant by its counsel, then and there duly excepted.

A. He is 17, he was 17 the 3rd of May.
Q. The 3rd of May of this year?
A. Yes, sir.

Cross-examination.

By Mr. GRAY:

Q. When was your first child born, what year?
A. He was born 23 years ago; I have been married 24 years, pretty nearly 25 years, but it will be 25 years next May, the 4th of May.
Q. Didn't you say March?
A. May.
Q. Your first child was born one year after that?
A. Thirteen months after, he was born.
Q. Thirteen months?
A. Yes, sir.

Q. Is that child living?
A. No sir.
Q. When was the next child born?
A. That I don't remember exactly the date; I know he
91 was born a little over a year afterwards.
Q. A second child was another year, a year after the first child?
A. Yes sir.
Q. That child is living?
A. No sir, he is dead; the first child is dead.
Q. When was the next child born?
A. Well——
Q. The second child you say was born about a year after the first child.
A. A little over a year; I cannot say exactly; a little over a year.
Q. You mean thirteen months?
A. It might have been fifteen or sixteen months, something like that.
Q. Are you guessing at it or don't you know?
A. I don't know exactly; I have a book I marked the whole thing down.
Q. We are talking about it without the book now. When was the third child born?
A. The third child was born I think the 30th of September; she is 21 years old now, the girl.
Q. What year was she born in?
A. 21 years ago, that is 1889.
Q. Then Arthur came next?
A. Yes,—no, the girl came next.
Q. What?
A. Another girl came after that.
Q. Another girl came after that?
A. Yes sir.
Q. Did she have a name?
A. Matilda.
Q. How long did she live?
A. She lived four years.
Q. Was she born in the United States or Canada?
A. She is born right here in the United States.
Q. What year did she die in?
A. 1893, 1893 I guess, I ain't sure, four years after she was born.
Q. How old was Arthur when she died?
A. When she died, the girl?
Q. Yes.
A. The girl was four years old when she died.
92 Q. How old was Arthur when she died?
A. There is pretty nearly two years difference, he was about two years then.
Q. Without going through the whole list of children, you had a child in your family born to you every two years or so, two and a half years?

A. They never passed two years; there is not one that passed two years, all less than two.

Q. All less than two?

A. Yes, sir.

Q. That is to say ever since then you have had a child in less than two years?

A. Yes, sir.

Q. How many children are living now?

A. Eleven.

Q. And three dead?

A. Three dead.

Q. How old was Arthur when he went to work?

A. Fourteen.

Q. Exactly 14?

A. Well, might be a month over.

Q. Do you remember the month he went to work in?

A. If I am not mistaken it — in June.

Q. He said July, have you any recollection of it yourself?

A. I know he started to work a little before vacation; vacation came in June, so it must be around June he started to work.

Q. Did you certify as to his age?

A. He went to school and got his school certificate.

Q. Did you certify yourself, as parent?

A. Sure.

Q. You did.

A. Why, sure; I know his age.

Q. Did you make an affidavit as to his age at that time?

A. Why sure, not me, but the notary, she went to see the notary to get it made, I didn't make it myself.

Q. You never made an affidavit?

A. Not me. The boy did; he went to school and got it.

Q. You, as the farther of this boy, never made an affidavit as to the date did you?

A. No sir.

Q. So far as you know, your wife never did, did she?

A. Not that I know.

93 Q. You knew he was working for a grocery, didn't you?

A. Yes sir.

Q. You knew that?

A. Yes, sir.

Q. You knew he went to work for another grocery after that firm split up?

A. Yes, sir.

Q. Do you know where he worked next?

A. I could not say exactly where he went to work after that. I know he went to work down town some place; I could not say just exactly where it was.

Q. Didn't you take enough interest in where he was working to know where he was working?

Mr. GORMAN: I object.

The COURT: He may answer.

The WITNESS I might have known at that time; it is quite a while ago; I can't remember.

Mr. GRAY:

Q. How many years ago was it? You say it is quite a while ago, how many years ago?

A. It is a couple of years ago but pretty nearly two years ago, it is hard to keep that in my head, every little thing like that; I got lots of things to think about.

Q. You say it is not two years since she first went to work?

A. Well, it must be around two years.

Q. Since he first went to work.

Q. Since he first went to work; it must be a little over two years now, because he is seventeen now; he started to work when he was only 14, it is pretty nearly three years now he started to work.

Q. Where else has he worked that you know of?

A. I could not say where he worked since that; I know that he worked at a grocery store close to me; I know where he was working, but since that I could not say exactly where he has worked.

Q. Is that the only place that you know of your boy working, at the grocery store?

94

A. I know he worked at the Fair store, I could not say how long he worked there; I know he worked a few weeks; I don't know exactly how long he worked.

Q. Since he worked at the Fair, where has he worked to your knowledge?

A. I could not say. *The* I knew he worked a little while at an electric plant but I could not say how long he worked there, I knew he worked there for a while.

Q. Do you know whether he worked for the Kellogg Switchboard Company at Green street, did you ever hear that?

A. Not that I know of, I don't remember.

Q. You don't know when he went to work at Sturges & Burn Manufacturing Company, do you?

A. I knew he was working down in some shop, I don't know exactly the name of the place, until the accident happened I didn't know exactly the place before that. I knew he was working in some kind of a shop. I didn't know exactly where it was.

Q. Did you know anything about the age at which the boy could be employed, did you know anything about that?

Mr. GORMAN: I object to that as immaterial.

The COURT: He may ask him.

Mr. GORMAN: Exception.

A. I could not say, I did not know at that time how old they had to be. Of course I knew they had to be fourteen years old to work some place.

Mr. GRAY: To work at all, you knew that.

A. It was because when he got his certificate he was supposed to go to work, he got his certificate to go to work.

Q. When he got to be sixteen you knew he did not have to have a certificate, didn't you?

A. I don't know about that.

Q. You knew that a boy sixteen could go to work at any-
95 thing without any certificate, you knew that, didn't you?
A. I guess so.

Mrs. MATILDA BEAUCHAMP, a witness called in behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. GORMAN:

Q. What is your name?
A. Mrs. Beauchamp.
The COURT: Your first name, Mrs. Beauchamp.
A. Mrs. Matilda.
Q. You are the mother of Arthur Beauchamp, the plaintiff in this case?
A. Yes, sir.
Q. How old was Arthur at the time he was hurt?

Mr. GRAY: That is objected to.
The COURT: It is overruled.
To which ruling of the court, the defendant, by its counsel, then and there duly excepted.

A. He was fifteen, he was going to be sixteen in May, the 3rd of May, 1891.
Mr. GORMAN: The 3rd of May of what year?
A. 1891.
The COURT: You mean he was born the 3rd of May 1891?
A. Yes sir.

Mr. GORMAN: That is all.
The COURT: Cross examine.

Cross-examination.

By Mr. GRAY:

Q. Have you the records of every eleven or fourteen children that have been born to you?
A. Yes sir. I have.
Q. How old would the oldest child be if living?
A. He would be 23 years last March.
Q. How old would be the second one?
A. He would be 22.
96 Q. Is Arthur the third?
A. No, he is the fourth, he is the fifth, there is Eliza is the third.
Q. I thought only two died before Arthur was born.
A. Yes, sir.
Q. How many children died before Arthur was born?
A. Two.

The COURT: What was the name of the oldest, what was the oldest one's name?

A. The oldest one's name was Joseph Nephtali.

Q. He is dead?

A. He is dead.

Q. He would be 23 if he was living, in March?

A. Yes, sir.

Q. Next March?

A. Last March.

Q. What was the second one?

A. The second was Moses.

Q. Is he living?

A. No, sir, he is dead.

—. How old would he be if he were living?

A. He would be twenty-two.

Q. When?

A. He would be 22, let me think it over, I have almost fogotten, I did remember.

Q. Take your time. Do you remember the month he was born?

A. Yes, sir, he was born on the 11th of August.

Q. He was born on the 11th of August?

A. Yes, sir, he would be 22 next August.

Q. 22 next August?

A. Yes, sir.

Q. All right, the third one was whom?

A. The third one was Eliza.

Q. Eliza?

A. Yes sir, she was born the last of September.

Q. The last of September?

A. Yes, sir.

Q. How old is she?

A. She is twenty-one, she was twenty-one last September.

Mr. GRAY: Is Eliza living?

A. Yes, sir.

The COURT: The next is Joseph?

A. The next is Matilda.

Q. The next is Matilda?

A. Yes sir.

97 Q. How old is Matilda?

A. She was nineteen last October.

Q. Is she living?

A. She is dead.

Mr. GORMAN: Last October she would be nineteen.

A. She would be nineteen the last October.

The COURT: The next one?

A. The next one is Arthur.

Q. The next one is Arthur?

A. Yes, sir, he was seventeen last May, the 3rd of May.

Mr. GRAY: Your children have been coming right along?

A. Yes sir.

Q. Every year or so?

A. Every year.
Q. Every one a year and less than two?
A. Yes, sir.

Mr. GORMAN: I want to offer in evidence, if the court please the section of the statute that we plead.

The COURT: All right.

Mr. GORMAN: Of the revised statutes of 1908, known as section 11, paragraph 20, reading from page 1053.

The COURT: I do not suppose it is necessary to offer the statute in evidence, although you may if you desire.

Mr. GRAY: Do you offer it or don't you?

Mr. GORMAN: I offer it.

Mr. GRAY: It is objected to.

The COURT: The objection is overruled.

Mr. GRAY: Amongst other grounds already given, on the ground of the unconstitutionality of the statute.

The COURT: All right.

Mr. GRAY: One has been held already unconstitutional.

Mr. GORMAN: I desire to read that to the jury.

Mr. GRAY: You have already read it.

Mr. GORMAN: All right: I will read it in the argument. Said statute so offered in evidence and received is in the words and figures following to-wit:

The plaintiff here rested.

98 Thereupon the defendant presented to the Court a written motion to take the case from the jury, accompanying said motion by a written instruction, which motion is as follows:

"STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

ARTHUR BEAUCHAMP, by His Next Friend,
vs.
STURGES & BURN MANUFACTURING COMPANY.

And now comes the defendant, Sturges & Burn Manufacturing Company, at the close of the plaintiff's evidence, and before any further proceedings in said cause, and moves the Court to exclude all the evidence from the consideration of the jury and to give to the jury the following written instruction: "The jury are instructed to find the defendant not guilty."

BULKLEY, GRAY & MORE,
Attorneys for Defendant.

The said written instruction presented to the Court with said motion being as follows:

"The jury are instructed to find the defendant not guilty."

But the court overruled and denied said motion and marked the same "Refused." To which rulings of and each thereof, the defendant, by its attorneys, then and there duly excepted.

Thereupon the defendant presented to the Court in writing another motion to take the case from the jury, accompanying said motion with a written instruction, which motion is as follows:

99 "STATE OF ILLINOIS,
County of Cook:

In the Superior Court of Cook County.

ARTHUR BEAUCHAMP, by His Next Friend,
vs.
STURGES & BURN MANUFACTURING COMPANY.

Now comes the defendant, Sturges & Burn Manufacturing Company, at the close of the plaintiff's evidence, and after the plaintiff has rested, and moves the Court to exclude from the jury all of the plaintiff's evidence introduced herein, under the third count of the second amended declaration, on the ground that the statute in said count of the second amended declaration, pleaded and set forth, is unconstitutional as being in violation of that part of Section thirteen, article four of the Constitution of the State of Illinois, which provides:

"No act hereafter passed shall embrace more than one subject, and that shall be expressed in the title. But if any subject shall be embraced in an act, which shall not be so expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed." And also that the statute set forth in said count is unconstitutional and void, because in violation of that part of Section one of the Fourteenth amendment to the Constitution of the United States, which provides:

"No state shall make or enforce any law which shall abridge the priviliges or immunities of citizens of the United States. Nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

And also that the statute set forth in said count is unconstitutional and void, as being in violation of section Two, Article
100 two, of the Constitution of the State of Illinois, which provides:

"No person shall be deprived of life, liberty or property, without due process of law."

And that all evidence introduced in support of said count is incompetent and immaterial.

BULKLEY, GRAY & MORE,
Attorneys for Defendant.

The said instruction presented to the Court being as follows:

"The Court instructs the jury that the plaintiff is not entitled

to recover under the third count of the second amended declaration, and that as to that count your verdict should be not guilty."

But the court overruled and denied said motion, and marked the same "Refused." To which rulings and each thereof the defendant, by its attorneys, then and there duly excepted.

Mr. GRAY: I want to make a motion that all the evidence in reference to the question of the age that has been introduced of this boy be stricken out.

The COURT: Overruled.

To which ruling of the court, the defendant by its counsel then and there duly excepted.

Mr. GRAY: There is no proof to sustain this count and I will offer a special instruction on that one count.

Mr. GORMAN: The case as it now stands is before the court and jury on the third count of the second amended declaration, and the second additional count, which charges negligence in giving the machine——

101 The COURT: You contend upon that count there is evidence?

Mr. GORMAN: Yes, I do.

The COURT: Well, I will let it go to the jury.

And thereupon the defendant, to maintain the issues on its part introduced the following evidence, to-wit:

JOSEPH DRAPER, a witness called in behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. GRAY:

Q. What is your name?
A. Joseph Draper.
Q. Where are you employed?
A. The Kellogg Switchboard & Supply Company.
Q. How long have you been with that company?
A. Nine years or over.
Q. What is your department, what work do you do there?
A. Employing the help, engaging help, taking applications that is one of the branches.
Q. Do you know this young man that sits here?
A. I could not say that I recollect him, no.
Q. Do you know whether or not you ever employed him?
A. Not by looking at his face.
Q. What, did you employ one Arthur Beauchamp?
A. I did.
Q. Have you any record of that employment?
A. I have.
Q. Let me see it please.

(Witness produces record.)

Mr. GRAY:

Q. What course do you pursue in employing men in that factory?

A. Inquire into what class of work they desire, what class of work.

Q. What?

A. Inquire into what class of work they desire.

Q. Yes.

A. What class of work they have had experience in.

102 Q. Yes.

A. What class of work they have had experience in.

Q. Yes.

A. Where they have worked previously.

Q. Yes.

A. Inquire as to their age, general experience, and get their references.

Q. Is that always the case?

A. Always the case, yes, sir.

Q. Is that your handwriting on this card?

A. It is.

Q. When did Arthur Beauchamp apply to you for a position?

A. I would have to refer to the records to see.

Q. Yes, all right.

A. Applied the 8th of October 1906.

Q. What did he say to you?

Mr. GORMAN: I object to that.

The COURT: If he has a recollection he may state it.

A. I beg your pardon.

The COURT: If you can recollect what he said to you, you may state.

Q. I have no recollection excepting that in answer to my question he gave me what is on the records here.

Mr. GORMAN: I object to that.

The COURT: If you recollect, the question is you are not to read what you see there, simply because you see it there, but if you have any recollection aside from the paper what was said.

A. No sir.

Mr. GRAY: I wish you would look at the card.

A. Yes sir.

Q. And having looked at it and read it over, can you then state from your recollection and independent of that card what he said to you?

A. No, sir, I could not from my recollection.

Q. After you have read the card, can you?

A. No, not after I have read the card, not from my recollection. I know I made this card out from information that he gave

103 me, from answers he gave me to my questions.

Q. Then what did he say to you?

Mr. GORMAN: I object to that.

The COURT: He can say if he recollects.

Mr. GRAY: Yes.

The COURT: The fact that you should judge from your opinion that he said these things to you, because you find them on the card would not justify you in saying what is on the card, but if, after having read this card, you can lay it aside and then your mind is refreshed, so that you recollect the occurrence and recall what was said, you may testify to it, but otherwise not.

A. Yes, sir.

Mr. GRAY: I show you the card and I wish you would read the card.

The COURT: Read the card and see if that will refresh your recollection so that you will remember him, and remember the occurrence and what he said to you independent of what is on the card.

Mr. GRAY: And I will confine it to his age, so as not to clog your memory with anything else.

A. I cannot recollect in this particular case.

The COURT: What further?

The WITNESS: Asking him anything more than I did anybody else.

The COURT: Do you remember asking him anything?

A. I do not remember the occurrence.

Q. You don't remember the occurrence?

A. No sir.

Mr. GRAY:

Q. Do you remember having read the card, that you did ask him the questions?

A. I know that I did but I don't remember it.

Q. Having read, do you know what you asked him?

A. I do.

104 Q. Will you state, having read the card, what you asked him.

Mr. GORMAN: I object to that.

The COURT: As I understand it, you know because you see it on the card?

A. No, because it is the custom because I never make out a card excepting from the answers of the applicants.

The COURT: The objection is sustained, what further?

To which ruling of the court, the defendant by its counsel, then and there duly excepted.

Mr. GRAY: Do you say that you did write that card?

A. I did.

Q. In the ordinary course of business?

A. Yes, sir.

Q. In the ordinary course of business in your office?

A. I did.

Q. And where has it been kept ever since?

A. On the file in my office.

Q. Do you know whether that is the memorandum that you made at the time Arthur Beauchamp asked for employment?

A. I do.

Mr. GRAY: Then I offer the card in evidence.

Mr. GORMAN: I object to it.

The COURT: That is not competent. If it is admissible at all it is admissible as a record.

Mr. GRAY: Certainly, yes.

The COURT: Certainly records are admissible.

Mr. GRAY: Yes.

The COURT: Does this come in the class of cases where a record is admissible?

Mr. GRAY: It is an original, it is better than his book.

The COURT: Is this the sort of a record that is provided by law as evidence that it can be introduced as evidence?

Mr. GRAY: I think so, when I have identified it by the boy himself, that he was employed there, I make the connection and
105 at this time——

The COURT: There is no question but that the plaintiff testified he was employed there. Certain questions were asked him. Now, you introduced that card for the purpose of charging him with an admission.

Mr. GRAY: Yes.

The COURT: The question is whether or not that is competent, whether or not that is the sort of a record that is competent—I don't know.

Mr. GRAY: I believe it is, if the court please; taken down at the time, I have shown where it has been.

The COURT: In case of an action on account, goods sold and delivered, where charges are made against parties to the suit, especially books, if you produce the original entry made at the time, you can show the course of business, that is competent, as showing the transaction.

Mr. GRAY: Yes.

The COURT: For the purpose of showing the transaction?

Mr. GRAY: This is against this boy different, it is taken from his lips.

The COURT: That is what the witness says. If the boy kept the record himself, it was his admission against interest, but it is kept by a stranger.

Mr. GRAY: So it is in other cases on account.

The COURT: Yes. An action on account, in a suit between parties. I am not clear about it, of course, if it were a record, if it were records of a private corporation—if the objection is insisted upon I am inclined to be against you.

Mr. GORMAN: Yes, I will insit upon it, your Honor.

The COURT: I do not think it is competent.

Mr. GRAY: Do you keep records in your office of parties who are employed by you in this way?

106 A. Yes sir.

Q. Is this a record?

A. We have here a rate card showing that he went to work at a given date, at a certain rate, and that has been kept on file.

Q. Is this card that you produce here part of the records of your company, kept in the ordinary course of business?

A. Yes sir.

Q. Is it kept with other cards of similar character?

A. It is.

Mr. GRAY: I now offer it again.

The COURT: It is incompetent.

Mr. GORMAN: I insist upon the objection.

The COURT: Objection sustained.

To which ruling of the court, the defendant, by its counsel then and there duly excepted.

Mr. GRAY: Will you kindly mark this card?

Whereupon said card was marked by the reporter Defendant's Exhibit A, for identification and is in the words and figures following to-wit:

Kellogg Switchboard and Supply Co.
Punch by Keck.

10-8-06.

Application Card No. —.

Date, —— ——. Age, 16
Name, Beauchamp, Arthur. Married or Single, ——.
Address, 2089 38" pl., ——.
Where last employed, W. E. Co. How long? 2 wks.
Nature of work in last place, Piece. Wages received, ——. Reasons for change, ——.
Class of work desired, ——.
References, Wm. McCormick, Grocer.
Remarks, ——.
Employed 10-9/06. Department McKenzie. Rate 14c. Clock No. 521.
Left our employ 1/10/07. Reasons for leaving. Dissatisfied, trans. to P. L. G.
Out 2/20/07.

107 FREDERICK WILLIAM HEBERT, a witness called in behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. GRAY:

Q. What is your name?

A. Frederick William Herbert.

Q. Where are you employed?

A. Sturges & Burn Manufacturing Company.

Q. How long have you been there?

A. About ten years.

Q. Where do you live?
A. My home is Chicago Ridge, Illinois.
Q. How long have you lived there?
A. About sixteen years.
Q. You are a man of family?
A. Yes, sir.
Q. Are you interested in anyway except as an employee of the Sturges & Burn Manufacturing Company?
A. No sir.
Q. Do you know the young man here who has brought this law suit?
A. Yes, sir.
Q. When did you make his acquaintance?
A. When he came to the factory looking for work.
Q. When was that?
A. I believe it was sometime in April 1907.
Q. Where was he when you saw him?
A. He was upstairs in the superintendent's office.
Q. Who is the superintendent?
A. Mr. John Perry.
Q. Was he in part of the office or outside or where?
A. At the window.
Q. At the office?
A. At the window, yes sir.
Q. That is where you first saw him?
A. Yes, sir.
Q. Did you have any conversation with him about employing him?
A. I asked him what he had been working at.
Q. Did he apply for a job, I will ask you first if you had any conversation with him.
108 A. He asked for a job.
Q. Then what did you say?
A. I asked him what he had been doing. He said he was a press hand. I said how long have you been working on presses? He said, about a year. I said, "Where have you been working?" and he said he had been working at Kellogg's and the Western Electric. I said "How old are you," and he said——

Mr. GORMAN: I object to that.
The COURT: Overruled.
Mr. GORMAN: Exception.

The COURT: What did he say?
A. He said he was a little over seventeen.

Mr. GORMAN: I move that the answer be stricken out on the ground that it is incompetent, irrelevant and immaterial.
The COURT: It is overruled.
Mr. GORMAN: Exception.

Mr. GRAY:
Q. Go along and tell the rest.

A. I said, "What class of press do you work on," and he said on all classes. I said "where was the last place you worked?" and he said "Kellogg's." How long have you been working there, "he said "about a month." Then I took him downstairs and gave him over to the assistant and the assistant put him to work on presses.

Q. What is the assistant's name?

A. Fred Kansoer.

Q. Well, after that did you see him at work.

A. Yes sir.

Q. Where did you see him working?

A. On the presses about ten or fifteen minutes after I gave him over to the assistant.

Q. What was he doing then?

A. He was cutting blanks at the time.

Q. Did you see him after that at all, and before the injury?

A. Yes, sir I watched him several times.

109 Q. You were in and around the factory were you?

A. All around the factory.

Q. All the time?

A. Yes sir.

Q. What other presses did you see him working on?

A. Well, he worked on several small presses there and large presses while he was there, he was changed from one press to another.

Q. Have you ever seen him work on the press upon which he was hurt?

A. Yes, sir.

Q. Before the day of the accident?

A. Yes sir.

Q. What was he doing then, if you know?

A. Why, he was doing a job something similar to the one he got hurt on but a little smaller in diameter.

Q. In the use of these presses is there anything used for the purpose of removing material that has been stamped?

Mr. GORMAN: That is objected to.

The COURT: It is overruled.

Mr. GORMAN: Exception.

Mr. GRAY:

Q. Do they use their hands or is there anything furnished them?

A. There is a stick with a small rubber attached.

Q. Is this one of the sticks you have referred to?

A. Yes sir.

Q. At what machines are those sticks furnished?

Mr. GORMAN: I object to that as immaterial, incompetent and irrelevant.

The COURT: You mean were furnished at that time?

Mr. GRAY: Yes, at that time.

The COURT: The objection is overruled.

Mr. GORMAN: Exception.

Mr. GRAY:

Q. At what machines were those sticks furnished at that
110 time?

A. Where there is work that comes on the top of the die instead of falling through, they place a blank on the die with one hand, with the left hand and they push it in with the stick, with the rubber attached.

Q. Just illustrate it, please.

A. They take the blank in this way and push it in with the stick in that way (indicating) right in the die. The stick is used in the right hand, put the blank in with the left, then when it is drawn, this is knocked out in that shape with that stick (illustrating).

Q. What is the object of that rubber on the end?

A. That is to take a hold of the metal, it sticks, and the metal helps it, that is when you are putting the blanks in, that is when you are putting the blanks in and they use the same stick in order to knock them out after the article is drawn.

Q. Did you actually see the accident?

A. No, sir, I did not.

Q. How soon after the accident did you know of it?

A. About a minute or two minutes after that.

Q. How was it called to your attention, how did you hear of the accident?

A. I was down at one end of the shop and a lad told me that a man got hurt and I run to his assistance as soon as I could.

Q. Did you see him when you got there, see the boy?

A. I saw them taking the boy and I told them to put something over his hand, and Behnke, another man, took him to the doctor.

Q. Did Fred take him to the doctor?

A. No, it was Behnke.

Q. Behnke?

A. Behnke took him to the doctor.

Q. Did you go to the machine?

A. I went to the machine.

Q. What did you find at the machine?

A. I found this out of here, this is broke now, it was not
111 in that kind of shape, it had just been broke off, that was in that shape when it was drawn (indicating).

Q. Was it in the machine in that shape?

A. In that shape, and the pieces of the fingers was there.

Q. Is that the identical piece of tin?

A. Yes, sir.

Q. The identical piece?

A. Yes sir.

Q. You have had it in your possession ever since, have you?

A. Yes, sir.

Q. Until you gave it to me today?

A. Yes, sir.

Q. How was the press at that time, where was the die, was that up or was that down upon the work?

A. It was up off the work.

Q. Was it at its customary place or where?
A. Customary place, proper place.
Q. Proper place?
A. Yes, sir.
Q. How high above this thing was that that hit him, I mean how high above?
A. That was about five inches, the blank holder. The punch is about six and a half inches (indicating).
Q. Did you take this work out of the machine yourself?
A. I took the blank out myself.
Q. How many men were there at the machine after he was injured?
A. There was myself, Behnke, Mr. Perry was down there and the doctor, and Barney Kansoer.
Q. Was there any examination made of that machine?
A. Yes, sir.
Q. What examination was made of it, what was done?
A. I sat down and tried the press myself, that is after we cleaned it all out, the pieces of fingers and found that everything was working perfectly, and after, Barney Kansoer sat down.
Q. Who is this?
A. Barney Kansoer sat down, and ran the press for two
112 or three hours after that.
Q. And what is he?
A. He is the assistant now, around those presses, that is around the draw presses.
Q. That is the job was finished—did you hear at that time or the day before or any time around the time of his injury that there was anything wrong with that machine?
A. No, sir.
Q. Was there anything wrong with it at the time you examined it after the injury or at the time?

Mr. GORMAN: I object to that.
The COURT: It is overruled.
Mr. GORMAN: Exception.

A. No, sir.
Q. How long have you been with the Sturges & Burn Manufacturing Company in the position of employing men?
A. Ten years.
Q. You have been doing that for ten years?
A. Yes, sir.
Q. Is there any custom in that shop as to employing boys, and if so, at what age are they employed.

Mr. GORMAN: I object to that.
The COURT: Sustained.
Mr. GRAY: I have a Supreme Court's decision on that, your honor.
The COURT: Let us see.
Mr. GRAY: The last volume but one as to custom.
The COURT: Proceed with some other branch and I will read this authority.

Mr. GRAY: Yes, I will withdraw you for a minute and put on another witness.

The COURT: This decision is not in point.

Mr. GRAY: The question of custom?

113 The COURT: No, the objection will be sustained.

To which ruling of the court, the defendant, by its counsel, then and there duly excepted.

HENRY M. DAVIS, a witness called in behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. GRAY:

Q. What is your name?
A. Henry M. Davis.
Q. Where are you employed?
A. The Fair.
Q. The Fair, State and Adams?
A. State and Adams.
Q. General merchandise store?
A. Yes, sir.
Q. How long have you been connected with the Fair?
A. Thirteen years.
Q. What business or position there, say for the last five years?
A. Assistant superintendent.
Q. Do you know anything—do you have anything to do with the employment of men or women?
A. I have had.
Q. What?
A. I have had, yes sir.
Q. Did you have anything to do with hiring employés in 1906?
A. Yes, sir.
Q. Say in April?
A. I did.
Q. I will ask you whether or not on or about April 2nd 1906, one Arthur Beauchamp applied for a position with the Fair.

Mr. GORMAN: I object to his handing that to the witness—any document.

The COURT: Without your looking at the document, do you remember the date or not, such person did apply?

A. That might be truthfully said I handle one hundred a day and I cannot identify this one.

Q. Do you have any personal recollection of the transac-
114 tion without looking at the paper, independent of that paper, have you any personal recollection?

A. No sir.

Mr. GRAY: Do you know whether or not the applicant in this document shown you wrote it himself?

A. I do.
Q. Did you see it written?
A. I did.

Q. Was he employed on the strength of this paper?
A. He was.
Q. Step down, I want to make the connection.

(Witness withdrawn.)

ARTHUR BEAUCHAMP the plaintiff herein, having been heretofore duly sworn, was recalled as a witness on behalf of the defendant, and testified as follows:

Direct examination by Mr. GRAY:

Q. Look at the upper part of this document, Arthur, your own name, Arthur Beauchamp, and the rest there, and state if that is your handwriting.
The COURT: Is that your handwriting?
A. Yes, sir.
Mr. GRAY: That is all.
The COURT: That is all in your handwriting, the entire paper?
A. This is not here (indicating).
Mr. GRAY: I just called his attention to the upper part.
The COURT: To the upper part?
Mr. GRAY: Yes. You see the writing, April 2nd 1906, and the name Arthur Beauchamp, Brighton Park, how old are you, years 16, months 10 months, is your father alive, yes, what does he do, carpenter——

Mr. GORMAN: I object to that.

115 Mr. GRAY: Is that your handwriting?
The COURT: Did you ask him is that your handwriting?
A. Yes, sir.
Mr. GRAY (continuing): Is your mother alive? Yes. What does she do? At home. Do you live with your parents? Yes Have you worked at the Fair? No. That is all your handwriting is it?
A. Yes, sir.
Q. That is all, Arthur.

Mr. GRAY: I offer that in evidence.
Mr. GORMAN: I will object to this, if your Honor please.
The COURT: What is your objection?
Mr. GORMAN: The objection is it is incompetent, irrelevant and immaterial. Anything this boy said to the Fair or wrote in his application to the Fair can have no bearing upon this case.
The COURT: Overruled.
Mr. GORMAN: Exception.
Mr. GRAY: Will you kindly mark that.
Whereupon said document was marked by the reporter, Defendant's Exhibit B, and is in the words and figures following to-wit:

Form 0654 M 5M 9-08 (Fill out in ink).

Out. *Application for Employment for Boys.* Out.

Date, APRIL 2, 1906.

What is your name? Arthur Beauchamp.
Where do you live (Street and number)? Brighton Park, 2089 38th place.
How old are you? Years, 16. Months, 10 months.
Is your father alive? Yes. What does he do? Carpenter.
Is your mother alive? Yes. What does she do? At home.
Do you live with your parents? Yes.
Have you ever worked at The Fair? No. When did you leave? ——.
Why did you leave? ——.
Give name of persons you have worked for: Gausselin & McCormack; Business address, 2104 38 W.
How long did you work and in what year? 8 mo.
Why did you leave? Too hard.
Give name of references: Gausselin & McCormack.
Give address of References: 2104 38 W.

Don't Write on These Lines.

Position: Usher, Department 20; Salary, 4.00. Approval: H. M. Davis.
Ex. B. D. A. V.
Cl'ck 2008.

116 FREDERICK WILLIAM HERBERT, a witness heretofore duly sworn, resumed the stand for further direct examination by Mr. Gray and testified as follows:

Q. How many years to your knowledge have these little sticks with the rubber on the end been furnished at the different machines that you have referred to in that shop?
A. Well, they were furnished before my time.
Q. Have you an opinion——

Mr. GORMAN: I move that answer be stricken out.

The COURT: How long is your time?
A. My time is ten years.
Q. Ten years?
A. Ten years, yes sir.

The COURT: Overruled.
Mr. GORMAN: Exception.

Mr. GRAY:

Q. They have been in continuous use there during that period of time?
A. Yes, sir.

Mr. GRAY: That is all; take the witness.

Cross-examination.

By Mr. GORMAN:

Q. What do you call this device here, this object?
A. That is a die.
Q. What do you call that device, that stamps down upon it and shapes?
A. The punch and the blank holder.
Q. And the whole thing is called what, a punch press or stamping machine?
A. A drawing press.
Q. How many of these machines did you have in this factory at the time this boy was hurt?
A. About seven all told.
Q. Are they operated by steam power or electricity?
A. Steam power.
Q. How many men were employed by the Sturges & Burn
117 Manufacturing Company at the time this boy was hurt?

Mr. GRAY: Is that material?
The COURT: Go ahead; yes, how many?

A. The whole factory?
Q. In the whole factory?
A. I should judge there was about 250 to 275.
Q. How many boys were employed there?
A. Very few boys there, and they are over seventeen years of age.
Q. How many were there under twenty-one?
A. Under twenty-one?
Q. Yes.
A. Well I believe there was five or six working for me at that time.
Q. Did you have to do with the employment, employing all of the men and boys in that factory?
A. No sir, not all the factory.
Q. What do you mean, what department did you have to do with?
A. The stamping department.
Q. How many boys were employed in that department at the time Arthur Beauchamp was hurt?
A. I had about five or six working for me at that time.
Q. At the time Arthur Beauchamp applied for work there, did you ask him to sign any application?
A. No sir, I did not.
Q. Did he sign anything?
A. No sir, not myself.
Q. How many boys were in the crowd the morning he was employed?
A. What?
Q. How many boys were in the crowd in the office the morning Arthur Beauchamp was employed, the morning he got the job?
A. I could not say that. I know I hired two.

Q. What was the other boy's name?
A. That I don't recall.
Q. Is he still working there?
A. No, sir, he is not.
Q. Are any of the boys that were working on these presses at the time that Arthur Beauchamp was hurt still working there?
118 A. Yes sir.
Q. Who went to work on this press after Arthur Beauchamp was hurt?
A. I tried the machine myself.
Q. How long did you keep on trying it?
A. About ten or fifteen minutes.
Q. Then what did you do with the machine?
A. Then I had my assistant——
Q. What was his name?
A. Barney Kansoer.
Q. What did you have him do?
A. He worked two or three hours on the job.
Q. How old is he?
A. He is I judge about twenty-two or twenty-three, I could not just say, I judge he is about that age.
Q. He was the assistant foreman there was he?
A. Yes sir, of the draw presses.
Q. What?
A. Of the draw presses.
Q. What was Fred Kansoer?
A. He was an assistant over all the presses there.
Q. What was Fred's brother's position there?
A. He was the assistant under the draw presses.
Q. Did Fred's brother have anything to do with the machinery draw presses, stamp presses, or anything like that?
A. Setting the dies, he is the assistant at setting dies and looking after the work of the draw presses.
Q. When was the machine that Arthur Beauchamp was hurt on set up?
A. I should judge it had been running about two or two and a half years.
Q. Before he was hurt?
A. Before he was hurt.
Q. Wasn't it set up on the morning that he was hurt?

Mr. GRAY: He means this particular die.

A. The die was put in the press that morning.
Mr. GORMAN: How long does it take to put the die in?
A. Sometimes it will take an hour or two hours, it de
119 pends on what the job is in before, what bolts to place.
Q. This is a die for making can covers, how long does it take to put this die in place?
A. It depends on what kind of a job you had to do, what kind of a job was in there before.

Q. Did you see them putting in the die press on the morning that Arthur Beauchamp was hurt?
A. Yes sir.
Q. Do you know how long they were at it?
A. I should judge they were an hour or an hour and a half.
Q. Do you know who did it?
A. Yes, sir.
Q. Who was it?
A. Barney Kansoer.
Q. Did Fred's brother have anything to do with that?
A. Not setting the die not at that time.
Q. Did you know anything about the fly wheel or any part of this machinery that operated this press being out of order and being repaired after young Beauchamp started to work on it?
A. No sir.
Q. How long did they continue to run that press after Arthur Beauchamp was hurt?
A. How long?
Q. Yes.
A. They finished the job, Barney Kansoer——
Q. How long did that take?
A. I believe it was two or three hours.
Q. Then they took the machine apart, didn't they?
A. No, sir, they took the die out and put another job in there.

Redirect examination.

By Mr. GRAY:

Q. You were asked about the boys in your shop, you said you had five or six?
A. Yes sir.
Q. What were their ages?

Mr. GORMAN: I object to that.
The COURT: Overruled.
Mr. GORMAN: Exception

120 The COURT: What were their ages?
A. Seventeen, eighteen to twenty-one.

Mr. GRAY: That is all.

Recross-examination.

By Mr. GORMAN:

Q. How do you know their ages?
A. How?
Q. How did you know their ages?
A. We generally ask and I never take a man unless he says he is over seventeen.
Q. Then you will take anybody that says he is over seventeen will you?
A. If he looks over that, and he looks that age.

JOHN PERRY, a witness called in behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. GRAY:

Q. What is your name?
A. John Perry.
Q. You are the superintendent of the Sturges & Burn Manufacturing Company?
A. Yes sir.
Q. And have been for some years?
A. Six years.
Q. Do you know the boy that brought this suit?
A. Yes sir.
Q. What is his name?
A. Arthur Beauchamp.
Q. Where did you first see him?
A. He applied at my office for employment at the factory.
Q. Is that what you call the employment slip?
A. Yes sir.
Q. Is your name on that?
A. Yes sir.
Q. That has reference to the employment of whom?
A. Arthur Beauchamp.
Q. Did you put your name on it the day he was employed?
A. Within fifteen minutes of the time he was employed; they came right up to me to go on record.
121 Q. Then you saw him on that day?
A. Yes sir.
Q. Did you hear anything said by him as to what his age was?
A. I heard Mr. Herbert ask him how old he was and he says, "I am over seventeen."
Q. You had nothing to do with taking or putting him at work I take it?
A. Nothing whatever.
Q. When did you first hear of the accident?
A. Why, the minute that it occurred.
Q. Where were you?
A. In my office.
Q. Did you see the boy afterwards?
A. Oh, yes, I saw him.
Q. Where was he when you saw him?
A. I saw him down in the press room, right under me in the press room, the press room right under me.
Q. Right underneath your office?
A. Right underneath my office.
Q. Did you see the machine at that time?
A. Yes, sir.
Q. Who else examined it, if it was examined?

A. It was examined by Mr. Herbert, William Behnke, I think it is, one of our employés, a straw boss, and also another straw boss.

Q. Kansoer?

A. Yes, Ben Kansoer.

Q. Ben Kansoer?

A. Yes, sir, Ben Kansoer. Those are the men that examined the machine, but there was another Kansoer there who took his fingers out; his fingers were taken out while I was there.

Q. Where was this part that comes down to make the—that comes down to the die (indicating)?

Q. Where is what?

Q. Was the machine up or was it down?

A. The machine was up.

Q. Was up?

A. Yes.

Q. What is the space between the die where the work is put in order to be stamped, and the piece that comes down and
122 presses it.

A. Approximately twelve inches, that is in height.

Q. What was done in reference to this machine, in the examination made of it.

Q. It is not customary after an accident——

Q. Not the custom—tell us what was done in this particular instance

A. The machine was examined and witnesses called to see that it was in good condition.

Q. Witness what?

A. Called to see that it was in good condition.

Mr. GRAY: Was it in good condition?

A. I found it in very good condition.

Mr. GORMAN: I move that be stricken out, that statement.

The COURT: It is overruled.

Mr. GORMAN: Exception.

Mr. GRAY:

Q. Was there anything wrong with it?

A. Nothing whatever, sir.

Q. Had anything come to your knowledge that day, or the day before or several days before, that there was anything wrong with that machine?

A. Nothing at all.

Q. Did it work afterwards?

A. It worked afterwards yes sir.

Q. Had any of the foreman around there said anything to you about the condition of this machine?

A. No sir.

Mr. GRAY: Take the witness.

Cross-examination.

By Mr. GORMAN:

Q. You say it is customary to call witnesses to examine a machine after an accident?
A. Yes sir.
Q. That is for the purpose of saying that it is in good condition?
123 A. Saying that it is in good condition.
Q. Who are the witnesses that it is customary to call on occasions of that *time?*
A. The foreman of the press room, and his under foreman. I am usually called down to inspect it, to see that it is all right myself.
Q. The foreman and superintendent, who is yourself?
A. Yes, sir.
Q. And the straw bosses?
A. Yes, sir the straw bosses.
Q. Who was the foreman that was called this day?
A. Mr. Herbert.
Q. Mr. Hubbard?
A. Mr. Herbert.
Q. Oh, Mr. Herbert.
A. Yes sir.
Q. Who else?
A. Ben Kansoer.
Q. He is a straw boss is he?
A. He is a straw boss, yes sir.
Q. Who else was called?
A. Herman Behnke, I think his name is.
Q. Was he also a straw boss?
A. Yes, sir.
Q. Who else was called?
A. To examine it, no one.
Q. And yourself?
A. Myself, they called my attention to it.
Q. How many men were employed there at the time that this accident happened?
A. Within the plant.
Q. Yes.
A. Oh, 225.
Q. How many in the stamping room?
A. In this one particular room?
Q. Yes.
A. Or our stamping department?
Q. In the stamping department.
A. In the stamping department?
Q. Yes.
A. That covers a good deal of ground. I should say in the stamping department, approximately sixty.

Q. How many in this one room where Beauchamp was hurt, how many men?

A. Oh, perhaps twenty.

Q. How many boys were employed in this same room on that day?

A. Not any that I know of, they are all men.

124 Q. Were there any boys employed in the establishment at all on the day that Beauchamp was hurt?

A. No sir.

Q. You called Beauchamp a man too, did you?

A. Yes sir we do. When we get over his age I figure him as a man.

Q. How many 16 or 17 year old men were employed there on the day Beauchamp was hurt?

A. Perhaps one or two.

Q. How many?

A. One or two; have to be over 16 to be employed there.

Q. What?

A. They would have to be over 16 to be employed. We do not employ anybody under 16, not even in the office.

Q. How many did you have there that were employed there under 21, on the day that Beauchamp was hurt?

A. In the stamping department?

Q. Yes.

A. I could not answer the question.

Q. How many boys about Beauchamp's age did you put to work on the day that Beauchamp applied for his job?

A. Two or three, or three I think it was.

Q. Did you say anything to either of them about their age?

A. No sir.

Q. That was any part of your duty?

A. No sir.

Q. Whose duty was it to inquire about the ages?

A. The one that employs them; it would be Mr. Herbert out there.

Q. You heard Mr. Herbert talk to Arthur Beauchamp?

A. I overhear conversations; it is right at my desk; I overhear conversations.

Q. What was it that Herbert said to Beauchamp about his age?

A. He says "How old are you?"

Q. What did Beauchamp say?

A. He says "I am over 17."

Q. Is that all that was said about it?

A. That is all.

Q. Beauchamp did not sign any application, did he?

A. No, not to my knowledge.

125 Q. He did not furnish any affidavit as to his age?

A. No sir, if he had said he had been under 17 we would not engage him at all.

Q. Was he asked to furnish any affidavit as to his age?

A. Not to my knowledge.

Q. Was he asked if he was 17?
A. Not to my knowledge.
Q. So that you have told us now all that was said by him and by Herbert about his age?
A. Yes sir.
Q. That is all the information you have concerning his age?
A. Concerning his age, yes sir.

Redirect examination.

By Mr. GRAY:

Q. Do you have any affidavit boys in your factory department?
A. No sir.
Q. Haven't had for a number of years?
A. Not during my employment with Sturges & Burn.
Q. How long does that date back?
A. Six years.
Q. You don't employ young boys under 16.
A. We don't employ either boys or girls under 16.

Mr. GRAY: That is all.

FRED KANSOER, a witness called in behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. GRAY:

Q. What is your name?
A. Fred Kansoer.
Q. Who do you work for?
A. The Acorn Press Manufacturing Company.
Q. How long have you been working for the Acorn Press Manufacturing Company?
A. About nine months, something like that.
Q. You have no connection with the Sturges & Burn Manufacturing Company, have you?
A. No sir.
Q. You did work there at one time?
A. Yes sir.
Q. Worked there in the spring of 1907?
A. Yes sir.
Q. Do you know Arthur Beauchamp?
A. Yes sir, I do.
Q. You recognize him, do you?
A. Yes sir.
Q. Where did you first see him?
A. Over at Sturges & Burn.
Q. A little louder.
A. Over at Sturges & Burn.
Q. Where was he when you first saw him?
A. How?

Q. Where was he when you first saw him, what part?
A. Down in the press room.
Q. Did somebody bring him down to you?
A. Yes sir.
Q. Who brought him down?
A. Mr. Herbert.
Q. What did you do with him?
A. Put him to work on the press.
Q. How long did he work there?
A. I could not exactly judge, I guess about a month, somewhere around there; I don't remember exactly.
Q. You don't remember that exactly now?
A. No sir.
Q. Did he work on different presses in the room there?
A. Yes sir.
Q. Do you know this press that he was hurt upon?
A. Yes sir.
Q. Did you instruct him on this press or any other press?
A. Not on that press I didn't, because I didn't attend to that end of the shop; when Herbert was not there, I usually attended to the lower end, the small presses.
Q. You did not attend the south end of the shop?
A. Not while Herbert was there; if he was off I did.
Q. He says you put him to work on that machine as I understand it, is that right, the machine that he was hurt upon?
A. No sir, I did not.

Mr. GORMAN: I object to that statement. The plaintiff did not say that.

The COURT: That is not a proper way to cross examine testimony. You may ask him whether he did or did not.

Mr. GRAY:

Q. Did you put him to work on that?
A. No, sir.
Q. What was the press that you put him on. How many presses did you put him to work upon?
127 A. Well, I could not remember. I have different presses there, as high as 25 or 30. You might cut with four or five different presses in one day.
Q. When you did put him to work at a press, was there anything said to him or anything done?
A. Well, I instructed him how to run the job, on every job I put him on.
Q. How would you instruct him?
A. It depends on the different kinds of jobs. If you have a job on you put in blanks, we use a stick and shove them in with the stick.
Q. Where ever you put in a blank you use a stick?
A. Yes, sir.
Q. Was that so on that job on that day?
A. Yes sir.

Q. Did you ever use a stick like this in shape?
A. Yes, sir, made many of them.
Q. Where were these sticks furnished, how were they furnished, and where were they to be found?
A. Well, we pick up any piece of wood. We had a box with rubber in, cut it pointed, stuck it through the rubber so that it stayed on there.
Q. Did you ever say anything to this boy Arthur Beauchamp about using a stick?
A. I did on certain jobs.
Q. What jobs were they?
A. I don't know whether I ever gave him a stick or not or work on jobs where he had to use a stick that I don't remember because there was so many, I don't know whether he ever worked on a job where he had to use a stick the short time he was there.
Q. If he had to work on a machine where he had to use one of those blanks as you call it, was a stick furnished?
A. Yes, sir.

Mr. GORMAN. I object to that.
The COURT: He may state.
Mr. GORMAN: Exception.

Mr. GRAY: Did you ever say anything to him about not
128 using his hands, where his hands would get hurt?

Mr. GORMAN: I object to the leading question.
The COURT: You may state.
Mr. GORMAN: Exception.

The COURT:

Q. Do you ever remember having talked with him on that subject?
A. I don't remember whether I did or not, because I don't know whether I ever put him on a job of that kind.
Mr. GRAY: Are you able to say on those jobs he was put on, where blanks had to be handled the machine, where sticks had to be used.

Mr. GORMAN: I object to that.

A. No, sir.

The COURT. I think you had better ask him his recollection.
Mr. GRAY: Did you take him to the doctor?
A. No sir.
Q. You are sure about that?
A. Yes, sir.
Q. Do you know who did?
A. Yes, sir.
Q. Who?
A. Herman Behnke.
Q. So you could not have talked to him on the way to the doctor?
A. No sir.

Cross-examination by Mr. GORMAN:

Q. Have you a brother?
A. Yes, sir.
Q. Is he still working at Sturges & Burn Manufacturing Company?
A. Yes, sir.
Q. He was working there at the time this boy was hurt?
A. Yes, sir.
Q. What is his name?
A. Bernard.
Q. Did you ever see this boy working on that sort of a job?
A. I did.
Q. Putting these tins in the machine and getting them sta-ped into the form of a can cover?
129 A. I saw him work on that job.
Q. That was not the kind of a job where you were required to use a stick, was it?
A. Yes, sir.
Q. Did you see him using a stick on that job?
A. I don't know whether I did or not. I seen him work on a machine. I don't attend to that end of the shop. I see him work on a machine. Herbert took him down to that end and gave him over to a brother of mine.
Q. Mr. Herbert took him down to that end?
A. Yes, sir.
Q. To his foreman?
A. Yes, sir.
Q. Did you see him working on this job which he got his hand hurt on?
A. Yes, sir, I saw him put to work on the machine.
Q. How was he doing?
A. I could not tell you. We got so many presses down there, all I see, I see a man working there. I was not over there to see if he had used a stick. I did not look after that part when Herbert was there.
Q. How far were you away from where he was operating his press on which he got his hand hurt?
A. Sometimes a block, sometimes, I would walk away.
Q. You mean from one street to the other?
A. Yes, sir.
Q. But in the same building?
A. In the same building.
Q. Who did they usually employ on these stamping machines, men or boys?
A. Some boys and some men.
Q. About how many boys were working in this factory on the day that Beauchamp was hurt?
A. I could not say maybe five or six, ten, somewhere around there.
Q. Did you have any boy working on a machine that you had charge of?

A. Yes, sir.

130 Q. What was that boy's name?

A. I don't remember just on that day, there were several working——

Q. Was any of these boys bigger than Beauchamp?

A. No, sir, some the same size and some were bigger.

Q. Any of them smaller?

A. One was smaller.

Q. Did you know anything about the fly wheel on that machine that Beauchamp got hurt on being out of order that day?

A. No, sir.

Q. Is your brother here today?

A. Yes, sir.

Mr. GRAY: He is here, the next witness.

Mr. GORMAN: How long since you left the employ of the Sturges & Burn Manufacturing Company?

A. About nine months.

Q. Who was it that called you over to this machine after Beauchamp got hurt, to see that it was in good condition?

A. I did not examine the machine.

Q. You did not examine it?

A. No, sir.

Q. Did you go near the machine?

A. Yes, sir, I took the fingers out of it, they were smashed up in it.

Q. You did not examine it at all?

A. No sir, I just took them out and went back to attend to my end of it.

Q. You do not know then what the condition of the machine was?

A. No, sir.

Redirect examination.

By Mr. GRAY:

Q. Were your boys over 16 or under 16?

Mr. GORMAN: I object.

The COURT: He may answer.

Mr. GORMAN: Exception.

A. They were all over 16.

Recross-examination.

By Mr. GORMAN:

131 Q. How do you know they were over 16?

A. How?

Q. How did you know they were over 16?

A. Because I asked him.

Q. Did you ask this boy how old he was?

A. No, sir, the ones I hired I did.

BERNARD KANSOER a witness called in behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. GRAY:

Q. What is your name?
A. Bernard Kansoer.
Q. What is your business?
A. Die setter.
Q. Die setter?
A. Yes, sir.
Q. Where are you working?
A. Sturges & Burn Manufacturing Company.
Q. How long have you been working there?
A. Four years.
Q. Were you working there in April 1907, were you?
A. Yes sir.
Q. Do you know this young man, Arthur Beauchamp.
A. Yes sir.
Q. Do you recognize him?
A. Yes sir.
Q. Where did you first see him?
A. First, I seen him down in Sturges & Burn.
Q. What part of the building?
A. On the southwest side.
Q. Was he in any particular room?
A. He was down in the press room.
Q. Is that where you were employed in the press room?
A. Yes sir.
Q. Who brought him to you, if anybody?
A. Mr. Herbert.
Q. What was said at the time?
A. I should put him to work on the machine there.
132 Q. Did you put him to work?
A. Yes sir.
Q. Did he do his work all right?
A. Yes, sir.
Q. What machine did he first work on?
A. On the draw press.
Q. That is the first you put him at is it?
A. Yes, sir.
Q. Now have you in mind the machine on which he was hurt?
A. Yes sir.
Q. Had you ever seen him working on that machine before the day of the accident?
A. Yes, sir.
Q. When had you seen him working on that before?
A. Two days before.
Q. Now, on the day of the accident, what do you recollect about it, did you see him on that day?
A. Yes, sir.

Q. What do you recollect as to that day, the day of the accident, where you saw him, how you saw him, under what conditions.

A. I seen him sitting there working.

Q. Did you put him to work?

A. I put him to work, yes, sir.

Q. Tell this court and jury just what you did, tell it in your own way, just exactly what happened.

A. I went to work took him over there and told him to sit down on the chair and gave him a stick and showed him how to sit in the blank with the stick and take them out.

Q. What sort of stick was it?

A. A stick like this (indicating).

Q. Is there a stick like that at that machine all the time?

A. Yes sir.

Q. How long had these sticks been in use in that factory, in use?

A. As long as I have been there.

Q. You told him what?

A. I told him to use that stick, put them in with a stick and take them out with a stick.

Q. Did you see him do any work?

A. Yes sir.

Q. How much of the work did you see him do?

A. He done probably fifty, twenty-five to fifty pieces while I was there watching.

133 Q. Did he use the stick?

A. Yes, sir.

Q. Are you sure of that?

A. Yes, sir.

Q. You say you are a die setter?

A. Yes, sir.

Q. Did you assist in setting the die on this particular machine on which he was hurt?

A. Yes, sir.

Q. Then you know all about that machine, do you?

A. Yes, sir.

Q. That is, I understand it, this machine when it is stationary, this part and this round piece is up (indicating).

A. Yes sir.

Q. When it is not in motion?

A. When it is not in motion.

Q. How far from the bed or from this, under this tin that it comes down on, is this, how many inches above?

A. About four inches.

Q. You mean when the top is down or when it is level with this (indicating).

The COURT: When it is raised up.

Mr. GRAY: When it is raised up as high as it goes.

A. When it is raised up as high as it goes, that part is up higher than this part (indicating).

Q. Yes.

A. This part is up, I should judge, I never measured it, I should judge from four to five inches.

Q. Now it is a wheel then?

A. It is a wheel.

Q. That starts the machine to operate it?

A. The spring on the treadle and what you call the dog.

134 Q. You use your foot do you to that treadle?

A. To make it go up, it stops by itself.

Q. Supposing I was operating that machine, and here is the treadle, I put my foot on it, I press down and take my foot off, the machine is then in motion, is it?

A. Yes sir.

Q. And this upper part comes down on to the pin?

A. Yes sir.

Q. Then it goes back does it?

A. Yes, sir goes back.

Q. Does it do all that by my having put my foot on the treadle once?

A. Yes, just once.

Q. Just once?

A. Yes, sir.

Q. When it gets up, would it come down again, without my putting my foot on the treadle?

A. No sir.

Q. You have to put your foot on again?

A. You have to put your foot on again.

Q. So that there is no hurry in doing this work, that is to say, it stops there until you get ready to start that up again is that right?

A. Yes, sir.

Q. Did you hear from anybody or any source, on the day of the accident, or anywhere around there, that this machine was out of order?

A. No sir.

Q. Was your attention ever called to the fly wheel, that it was shaking, or anything connected with this machine on the day of the accident or any day around there?

A. No, sir.

Q. Did this boy call your attention to anything wrong with this machine?

A. No, sir.

Q. On that day or any other day?

A. No, sir.

Q. Did you see the boy hurt?

A. No, sir.

135 —. How soon after the accident did you see him?

A. I seen him from coming back right after the accident, but I was not up close to it.

Q. Did you go to him?

A. No sir.

Q. Did you go to him when he was hurt?

A. No, sir.

Q. Were you busy at that time?
A. I was going down and Mr. Herbert, they took him right upstairs and took him to the doctor.
Q. You saw Mr. Herbert take him to the doctor?
A. No sir, Mr. Behnke.
Q. You saw Mr. Herbert taking him up to the office?
A. Yes, sir.
Q. Did you go to the machine after that?
A. Yes, sir.
Q. How did you find the machine?
A. I found the machine up.
Q. Was it stationary?
A. It was stationary, the way it was supposed to be.
Q. Was the machine examined in your presence?
A. Yes sir.
Q. Did you take part in the examination?
A. Yes, sir.
Q. What was done towards examining the machine?
A. Well, we tried the treadle to see whether she worked all right. We put weights on the treadle to see how much it took to bear down the treadle, the treadle did not come down by itself.
Q. What was the result of that examination?
A. So as to make sure.
Q. What was the result or how did you find things?
A. Found them all O. K. everything was all right.
Q. Absolutely O. K.?
A. Yes, sir.
Q. Nothing wrong with it?
A. Nothing wrong with it.
136 Q. Was it worked after that right away?
A. Yes, sir.
Q. Before anything was done to it at all?
A. Yes, sir.
Q. Went right along with that job?
A. Yes sir.
Q. You worked at it, didn't you?
A. I worked on that job.
Q. After he got hurt?
A. Yes sir.
Q. Did you find any tin in the machine, any tin in the bed?
A. When he was hurt I did.
Q. You mean after he was hurt?
A. After he was hurt.
Q. Is this the piece (indicating)?
A. Yes, sir.
Q. You notice these dents there?
A. Yes, there is two air holes in that makes that (indicating).
Q. Has that been through the machine?
A. Yes, sir.
Q. What would do that?
A. The flesh of his fingers in there.

Q. Do you think that the fingers did that?
A. Yes sir.
Mr. GORMAN: Did what? the bones of his fingers you mean did that?
A. Yes, sir.
Mr. GRAY: Yes, as grammatically as you can put it.
Q. Did he have to use his hands in there?

Mr. GORMAN: I object to that.
The COURT: Sustained.
To which ruling of the court, the defendant, by its counsel then and there duly excepted.

Mr. GRAY:

Q. Was there anything to call for his placing his hands in that machine in doing the work he was doing there?

Mr. GORMAN: I object to that.
Mr. GRAY: That is competent.
The COURT: I think I will let him answer.
Mr. GORMAN: Exception.

A. No sir.

Mr. GRAY:

Q. Did you ever see this young man doing that work
137 without a stick, and putting his hand under that piece of steel that came down on to the tin?
A. No, sir.
Q. You never did?
A. No, sir.

Mr. GRAY: I think you may cross examine.

Cross-examination.

By Mr. GORMAN:

Q. What is your position with Sturges & Burn now?
A. Die setter.
Q. Are you a foreman?
A. Well, I assist, am an assistant.
Q. Assistant foreman?
A. Yes, sir.
Q. Where is Sturges & Burn Manufacturing Company plant?
A. Down on Harrison and Peoria street.
Q. Does it extend from Harrison street to the next street north or south of Harrison?
A. It don't on Peoria, I guess there is two lots there if I am not mistaken.
Q. How much ground does it cover?
A. It covers a whole block from Peoria to Green and from Harrison to Congress, less than other three houses that are standing on the northwest corner.

Q. How many men and boys did you have charge of at the time of this accident happened?
A. About five or six.
Q. Men and boys?
A. Men and boys.
Q. And among the boys was Arthur Beauchamp, who was one of the boys that was in your charge, was he?
A. Yes, sir.
138 Q. And the first time that he came to work in that plant he was assigned to you?
A. No, sir.
Q. Who was he assigned to?
A. I could not tell you.
Q. When was the first time he ever worked under you?
A. That was about two days before the accident.
Q. And on what press did you put him to work at that time?
A. On this same press.
Q. The same press that he was hurt on?
A. Yes, sir.
Q. How long did he work on that press?
A. He worked on there about a day at that time, the day he got hurt he worked there half a day.
Q. The day he was assigned to you, two days before the accident, he was assigned to that same press?
A. Yes sir.
Q. What did he make on the press that day?
A. It was similar to this (indicating) but smaller.
Q. Can covers, but smaller?
A. Yes sir.
Q. What did he work on the next day?
A. He was working on the other end.
Q. He was not with you?
—. He was not with me.
Q. Then on the day of the accident he was again assigned to you?
A. Yes sir.
Q. What time in the morning did he report to you for work on the morning of the accident?
A. About eight or half past eight.
Q. What was the usual hour for beginning work there?
A. Seven o'clock.
Q. What was this press on which the accident happened called, was it known by some particular name?
A. It was called a drawing press.
Q. What time did you start to work on that press that morning?
A. Well, I started setting the dies in the morning on that.
139 Q. What time?
A. Right at seven o'clock.
Q. How long did it take you to do that?
A. About an hour or an hour and a half.
Q. So that at eight o'clock or half past eight the press was ready for Beauchamp to go to work on.

Q. Yes, sir.
Q. Did he start in on the press at about that hour?
A. Yes, sir.
Q. About how many of these can covers can you stamp out on that press in an hour?
A. Well, I judge about four hundred.
Q. Four hundred in an hour?
A. Yes, sir
Q. They are put in there one at a time?
A. One at a time.
Q. Show the jury the process by which these blanks are put in, stamped and taken out from that machine.
Mr. GRAY: Give us the best illustration you can about it.
Q. Are those the holes you refer to?
A. Yes, those are the holes (indicating) (Witness illustrates), and after that piece of work is done, there is a nut in there that shoves that back out (indicating) and you slide it out that way (indicating).

Mr. GORMAN:

Q. Have you done that work yourself?
A. Yes, sir.
Q. How many times?
A. A good many times.
Q. Now, the first time you saw this boy working on one of these presses, you instructed him how to do the work did you?
A. Yes, sir.
Q. And how did you tell him to do the work?
A. The way I showed here now.
Q. You had that stick in your hand, did you?
A. Yes sir.
Q. So that when one is working with that stick—strike that out—in using this stick you hold it in your right hand, do you?
A. Yes, sir.
140 Q. And in using the stick there is no occasion for getting one's fingers or hand under the machine?
A. No sir.
Q. You can work it as quickly with that stick as you can without it, can you?
A. Yes sir.
Q. And with greater safety.
A. Yes sir.
Q. And these sticks you say were all around the building there?
A. Well, that is at the machines; they were not all around the building; they were just probably—the fellow that would set up the dies, the die setters are in charge of a stick like that, if one got lost he could get another one.
Q. Did you make the stick you gave to Beauchamp on the day of this accident?
A. I didn't make it that day, I had it at the press.
Q. But you handed it to him?

A. Yes, sir.

Q. Are there any kinds of work done there on these stamping machines at which they do not use those sticks?

A. On the bigger presses there is slow work, big jobs.

Q. What kind of work is that?

A. Milk can presses, or necks or bottoms, big blanks we use 17 or 18 inch blanks.

Q. On those you have to put them in with your hand and take them out with your hands, do you?

A. Yes, sir.

Q. Another feature about this machine is that if it is in good order, there is no danger of its falling down?

A. No sir.

Q. Unless you step on the treadle?

A. Unless you step on it.

Q. The stamping part of the machine that comes down is held in place by a dog when the machine is not working.

A. Yes sir.

141 Q. This dog is held in position, or made up of bolts and nuts, isn't it?

A. Yes sir.

Q. When these nuts get loose the dog releases its hold upon the clutch and the machine falls down, doesn't it?

Mr. GRAY: I object to that, there is no proof here——

The COURT: Cross examination.

Mr. GRAY: I didn't ask him about that.

The COURT: Didn't you ask him about the condition the machine was in?

Mr. GRAY: Not about the nuts.

The COURT: You asked him about the condition the machine was in.

Mr. GRAY: Yes, but he has assumed that there was something loose.

The COURT: He may answer.

To which ruling of the court, the defendant by its counsel, then and there duly excepted.

Mr. GORMAN:

Q. When the nuts on the dogs get loose, the dog releases its hold upon the clutch and the machine falls down?

A. On this machine there is exactly no nuts on that dog, it is a sort of pin that comes right through there, and that has got to come out, the full length of the pin has got to come out. It is through there about three inches long, and that pin has got to work all the way out in order to make that come, there is no bolt on here (indicating).

Q. What holds that pin in place?

A. It is counter bored and there is another set screw that is put in there.

Q. Is there not another pin or nut on that pin that holds it in place?

A. No sir.

Q. What do you call it, a set screw?

A. I call it a set screw that is in there through the clutch you might say, that hole is drilled through there, and a tap screw
142 is put in through that pin.

Q. Did you examine this set screw and that pin after that accident?

A. Yes sir.

Q. You found it all right?

A. Yes, sir.

Q. Is there a fly wheel here on this press?

A. Yes, sir.

Q. What sort of a thing is that fly wheel?

A. It is a wheel to set the press in motion. There is a gear and fly wheel.

Q. It is right near the end of the shaft too, isn't it?

A. Yes, sir.

Q. That fly wheel is held in place by a pin, isn't it?

A. No, sir, that is put on there with a key, key and shaft, there is a key driven in there.

Q. Driven through the shafting?

A. No sir there is a slot cut in the shafting and a key driver in that.

Q. It sets in between the axle of the wheel and the shafting?

A. Yes sir.

Q. And that is wedge shape, by which that holds the wheel to the shafting?

A. Yes sir.

Q. Did you tighten up that wedge or pin or whatever you call it on the day of the accident to Beauchamp?

A. No sir.

Q. Didn't Beauchamp call your attention to the fact that that wheel was out of position?

A. No, sir.

Q. Before he was hurt?

A. No sir.

Q. Didn't you say to him "You are a lucky young fellow; if that thing went much longer, it would fall down and kill you"?

A. No sir, that fly wheel cannot get off. There is two pulleys on either side of the fly wheel; the pulleys would have to come off before the fly wheel.

Q. Did you do anything on the fly wheel the day that
143 Beauchamp was hurt?

A. No, sir.

Q. Who examined this machine with you?

A. Mr. Herbert and Mr. Perry and Mr. Behnke.

Q. Anybody else?

A. Not that I can remember.

Q. Was your brother Fred there helping to examine it?

A. No, sir.

Q. Well, you were one of the men that were always called upon to examine the machine when men were hurt there?

A. Down at the end where I had charge of, that is all.

Q. About how many times did you examine machinery to see whether it was all right, after persons getting hurt upon it, before the accident to Beauchamp?

Mr. Gray: I object to that.

The Court: Sustained.

Mr. Gorman: Exception.

Q. Did you ever during that time you have been working for Sturges & Burn, after an accident happened there, and you examined a machine, did you ever on any of those occasions find the machine out of order?

Mr. Gray: I object to that question.

The Court: Sustained.

Mr. Gorman: Exception.

Q. Isn't it a fact, Mr. Kansoer, that there has been a great many accidents in this factory of Sturges & Burn and you have always been called upon to examine the machinery, and that they never called on any other of the employés there, except the foreman and straw bosses, for the purpose of making that examination?

Mr. Gray: I object to that question.

The Court: Sustained.

Mr. Gorman: Exception.

111 Q. Were there any of the men who were working in that shop that day, except the foreman and straw bosses called to examine this machine, to see whether it was all right on the day of the accident to Beauchamp?

A. Not that I remember.

Q. You made a report about this accident to the Sturges & Burn people, didn't you?

A. About this accident?

Q. Yes.

A. The foreman seen it himself.

Q. Didn't you make out a report about it? Sent some of the statements about how it happened, the condition of the machine and so forth to the Sturges & Burn Manufacturing Company.

A. Yes sir.

Q. That was part of your duty as assistant foreman, to report on accidents and the condition of the machinery after the accident, wasn't it?

A. Yes, sir.

Redirect examination.

By Mr. Gray:

Q. You say there was a push out, is that something that comes up to push the tin up?

A. Yes, sir, there is a rod travels under that; when that is drawn in, it is down in there, and you would not be able to get it out with a stick.

Q. I see, that is the way that works (indicating).

A. Yes, it pushes that up.

Whereupon an adjournment was taken until Wednesday December 9th A. D. 1908 at 9:30 o'clock A. M.

DECEMBER 9TH, A. D. 1908—
9.30 o'clock a. m.

Court met pursuant to adjournment.

Present: As before.

145 WILLIAM BEHNKE, a witness called in behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. GRAY:

Q. What is your name?

A. William Behnke.

Q. Where do you work?

A. Sturges & Burn Manufacturing Company.

Q. How long have you worked there?

A. Well, at the present time I have been working there for the last six and a half years.

Q. Before that how long did you work for them?

A. All told about 11 years and a half.

Q. What do you do there?

A. I am setting dies.

Q. Do you know this plaintiff, Arthur Beauchamp?

A. Yes, sir.

Q. Do you know the time he met with an accident in Sturges & Burn factory.

A. Yes, sir.

Q. What time of day was it about?

A. Close to 12 o'clock at noon.

Q. Did you have anything to do with the boy at the time or shortly after the accident?

A. I took him over to the doctor's.

Q. Are you the one that took him to the doctor?

A. Yes.

Q. Your name never was Fred?

A. No sir.

Q. You never were Fred's brother?

A. No sir.

Q. Did anybody else go with you, did you take him to the doctor?

A. An office boy.

Q. What?

A. An office boy.

Q. How far away was the doctor's office from your place of business?

A. Just about a block.

146 Q. Did you walk over there?

A. Yes sir.

Q. Was there anything said between you and the boy as to how the accident happened, on the way over to the doctor?

A. Well, the boy said he didn't know how it happened.

Q. Did he say that to you?

A. Yes sir.

Q. Is that all that was said?

A. That is all that was said.

Mr. GRAY: Take the witness.

Cross-examination by Mr. GORMAN:

Q. Did you take him home?

A. No, sir.

Q. Did you go home with the boy?

A. No, sir.

Q. Do you know who did go home with him?

A. Fred Kansoer.

LEE STURGES, a witness called in behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. GRAY:

Q. What is your name?

A. Lee Sturges.

Q. You are of the firm of Sturges & Burn Manufacturing Company?

A. Yes, sir.

Q. How long has your family been in business in Chicago, in the same line of business?

A. Something over 40 years.

Q. Your father originally I think owned the business?

A. Yes sir.

Q. Still connected with it?

A. Yes sir.

Q. You have heard of the matter that is in controversy here Mr. Sturges?

A. Yes, sir.

Q. Are you familiar with the machine in question?

A. Yes, sir.

Q. I think you have had a mechanical training?

A. Yes sir.

Q. A collegiate education in mechanics?

147 A. Well, principally shop experience.

The COURT: Which is better.

The WITNESS: Yes, a little more practical.

Mr. GRAY: Have you a catalogue which gives the picture of this machine?

A. Yes sir, I left it on the table there.

Q. You show me a book, and I see upon page 169, a machine which is called a Bliss drawing press No. 1½, is that the machine?

A. That is the machine.

Q. In question?

A. Yes, sir.

Mr. GRAY: Please mark that.

Whereupon said document was marked Defendant's Exhibit 4.

Q. Plaintiff in his evidence yesterday spoke about a fly wheel I do not see any fly wheel attachment here.

A. Yes, it is on the left hand side.

Q. Oh, it is on the left hand side?

A. Yes, next the pulley.

Q. You heard his evidence on that point, did you?

A. Yes sir.

Q. State to the court and jury whether or not that machine could operate in any way, if the fly wheel was in the condition he said it was in?

A. If it had moved as far as he said, it would have passed beyond the key way and revolved around the shaft and the press could not have turned over.

Q. The press could not work?

A. The press could not operate.

Q. It could not?

A. No, sir.

Q. Do you know of your own knowledge whether or not any stick or implement is furnished to these machines in all cases where work is fed into the machine and taken out?

A. Yes sir.

Mr. GORMAN: I object to that on the ground that it is immaterial and incompetent.

148 The COURT: I think he may state.

Mr. GORMAN: Exception.

The WITNESS: Yes.

Mr. GRAY:

Q. You are in the factory daily, are you not?

A. Yes, sir.

Q. It is a part of your business to overlook the factory.

Q. I have my time to spend in the factory.

Q. Did you see the stick which was here yesterday?

A. Yes sir.

Q. At the time of this accident, and before that and since, has such an implement as that been furnished to these machines where work is fed into these machines and taken out?

A. Yes sir.

Mr. GORMAN: I object to that on the same grounds.

The COURT: He may answer.

Mr. GORMAN Exception.

The WITNESS: A. Yes, sir.

Mr. GRAY: What starts this machine in motion, do you know whether or not the punch can descend without the foot being placed on the lever?

A. It cannot.

Q. Upon the treadle?

A. It cannot *not*.

Q. Did you hear about the time of this accident, or any time around that, that there was anything wrong with this machine?

A. No sir.

Cross-examination by Mr. GORMAN:

Q. Isn't it possible for that machine to repeat, to do what is called repeat, when it is out of order?

A. I have never known of a machine of that type to repeat.

Q. You have known of stamping machines to do that?

A. No sir.

Q. Never heard of one to repeat?

A. Never heard of one to repeat in my shop.

149 Q. What do you understand by repeating?

A. Where the driving wheel has in some manner become engaged in the shaft, and caused it to continue to act, without the clutch being thrown in and out.

Q. That is without the pedal.

A. That is without stepping on the pedal.

Q. You have heard of such a thing, but never knew of it happening in your shop?

A. Never known of it to have happened in our shop.

Q. You have heard of it happening in other shops?

A. I have heard of it mentioned.

Mr. GORMAN: That is all.

Mr. GRAY: That is all.

The COURT: Call another.

Redirect examination by Mr. GRAY:

Q. Are you able to state from your long observation of this machine, the speed of it?

A. The speed of the press, if held running continuously, is thirty strokes a minute, in actual practice, feeding in blanks and out, about fourteen.

Q. Fourteen strokes a minute?

A. Yes, sir.

Q. Will you illustrate that by your hand, just how that punch comes down and how it goes up.

(Witness indicates).

Q. You are working it all the time?

A. If the foot is off the lever it stops at the top, but I am talking about if it was running continuously, how often it would go, about once in two seconds.

Mr. GRAY: That is all.

Mr. GORMAN: I guess that is all.

Mr. GRAY: I understand the stick, tin, I introduced here.

150 *the stick, tin, I introduced here*, the punch bed and dies are introduced in evidence.

The COURT: How much time will you want on the side for argument?

Mr. GRAY: I wish to introduce the employment slip with Mr. Perry's name on it, which was identified yesterday.

Mr. GORMAN: I object to it as immaterial and incompetent.

The COURT: I will let it go in.

Said document was thereupon marked by the Reporter Defendant's Exhibit 5, and is in the words and figures following to-wit:

Sturges & Burn Mfg. Co.

Employment Form.

Name Arthur Beauchamp. Address 2089—38 Place.
Date employed 4/16/07. Dept. 4.
Wages $9.00. Per day, 7.15 A. M.
Press Hand John Perry. Foreman L. M. Seibert.

Defendant rests.

Mr. GORMAN: I want to move to dismiss all the counts in the declaration, excepting that count relating to the statute.

The COURT: What count is that?

Mr. GORMAN: The third count of the second amended declaration the only count on which I want to continue to try this case on.

The COURT: The third count of the second amended declaration.

Mr. GORMAN: Yes.

Mr. GRAY: That is the one that charges that the machine was out of order.

151 Mr. GORMAN: I say all except that count, I want to dismiss to everything except the count which charges a violation of the statute, and that count is the third count of the second amended declaration.

Mr. GRAY: Then I understand there is nothing——

The COURT: Dismiss all the counts of the declaration except the third count of the second amended declaration.

Mr. GRAY: Filed April 18, 1908.

Mr. GORMAN: I move to strike out of the record all evidence given by the witnesses for either side, relative to the condition of the machine, either before or after the injury. That evidence could only be competent under that count, and for that reason I move it be stricken out.

Mr. GRAY: That I object to. I moved yesterday to exclude all evidence on that first count, and my friend, Mr. Gorman objected to it, and it has been allowed to go to the jury, even after my suggestion that all the evidence under that count should be withdrawn.

The COURT: The evidence would be competent as long as that count was in; but this count is out of the declaration now. The only

question arises under the violation of the law of the statute. Did you mean as to the defective condition?

Mr. GORMAN: Yes, as to the defective condition of the machine.

The COURT: Defective or otherwise.

Mr. GRAY: They go on the admissibility of evidence as to what the boy ever said as to his age.

The COURT: That is competent.

Mr. GRAY: That was objected to.

The COURT: That is not the question. What is the next motion?

152 Mr. GORMAN: The motion I just made to strike out all evidence relating to the condition of the machine before or after the injury, the alleged defective or otherwise condition of the machine, that will go out.

The COURT: I will see, what is your next motion?

Mr. GORMAN: I move to strike out of the record all evidence of misrepresentations made by the plaintiff to persons other than the defendant relating to his age, for the reason that it is incompetent, immaterial, irrelevant, and does not tend to prove any issue in this case, and for the additional reason that the knowledge that he had made such representations to others was never brought home to the defendant.

The COURT: As I understand the rule, a false representation made by the boy about his age, would not be a defense, it would not be competent as against this suit, because the person employing a minor, is bound by his — to know the age of the minor.

Mr. GRAY: That is a question of fact for the jury.

The COURT: If a person employs a boy that is under 16 years of age, although the boy makes false representations, it is not a defense, but it is a circumstance in determining what it is. That motion will be overruled.

Mr. GORMAN: Exception.

I move to strike out of the record all evidence referring to the use of a stick by any person in operating the machine in question.

The COURT: How is that competent?

Mr. GRAY: Of course if he is dismissing his case as to negligence —but I think at this late day, I think the whole of these questions should go to the jury.

The COURT: No, if the boy were under 16 years of age, and were put to work at a machine, then the fact whether he was guilty
153 of negligence or was not, is not in question, whether he used the stick or not. The only question is whether he was put on that machine in their employment at an age under sixteen. That motion will be sustained and the motion as to the use of the stick, and the uses of the stick will be sustained.

To which ruling of the Court counsel for the defendant then and there excepted.

Mr. GORMAN: Now, I move to strike out of the record all evidence offered by the defendant relative to admissions made, or statements made by the plaintiff to the defendant, or any of its employés regarding his age.

The COURT: That motion will be overruled.

Mr. GORMAN: Exception.

The COURT: The motion to strike out all the evidence of the defective condition or good condition of the machine in question is sustained.

Mr. GRAY: So that machine is not in issue at all?

The COURT: The machine is not in issue at all.

Mr. GORMAN: And the evidence as to the representations made by the boy to other than the defendant concerning his age, that motion is denied.

The COURT: That motion is denied.

Mr. GORMAN: And exception.

Which was all the evidence offered or received on the trial of the above entitled cause.

Thereupon at the close of all the evidence the defendant presented to the Court a written motion, and presented with said motion a written instruction, said motion being as follows, to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

154 ARTHUR BEAUCHAMP, by His Next Friend,
vs.
STURGES & BURN MANUFACTURING COMPANY.

And now comes the defendant, Sturges & Burn Manufacturing Company, at the close of all the evidence in the case, and after both parties have rested, and moves the Court to exclude all the evidence from the consideration of the jury, and to give to the jury the following instruction:

"The jury are instructed to find the defendant not guilty."

BULKLEY, GRAY & MORE,
Attorneys for Defendant.

Said written instruction, which the Court was asked to give to the jury being as follows:

"The jury are instructed to find the defendant not guilty."

But the court overruled and denied said motion, and refused to give said instruction. To which rulings, and each thereof, the defendant, by its attorneys, then and there duly excepted.

Thereupon the defendant presented to the Court the following motion and presented with said motion a written instruction, the said motion being as follows:

"STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

ARTHUR BEAUCHAMP, by His Next Friend,
v.
STURGES & BURN MANUFACTURING COMPANY.

Now comes the defendant, Sturges & Burn Manufacturing
155 Company, at the close of all the evidence, and after both sides have rested, and moves the Court to exclude from the jury all of the plaintiff's evidence introduced herein under the third count of the second amended declaration, on the ground that the statute in said third count of the second amended declaration pleaded and set forth is unconstitutional, as being in violation of that part of section thirteen, article four, of the Constitution of the State of Illinois, which provides:

"No act hereafter passed shall embrace more than one subject, and that shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed."

And also that the statute set forth in said count is unconstitutional and void, because in violation of that part of section one of the Fourteenth Amendment to the Constitution of the United States, which provides:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. Nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

and also that the statute set forth in said count is unconstitutional and void, as being in violation of section two, article two, of the Constitution of the State of Illinois, which provides:

"No person shall be deprived of life, liberty or property, without due process of law."

and that all evidence introduced in support of said count is incompetent and immaterial.

BULKLEY, GRAY & MORE,
Attorneys for Defendant.

156 Said written instruction, which the Court was asked to give to the jury, being as follows:

"The court instructs the jury that the plaintiff is not entitled to recovery under the third count of the second amended declaration, and that as to that count your verdict should be not guilty."

But the court overruled and denied said motion, and refused to give said instruction. To which rulings, and each thereof, the defendant, by its attorneys, then and there duly excepted.

And thereupon, the attorneys for the plaintiff and defendant, respectively, made their arguments to the jury.

And be it remembered that, before the arguments to the jury began, the plaintiff presented to the Court seven instructions, in writing, and requested the Court to give the same to the jury, which instructions were marked "1", "2", "3", "4", "5", "6" and "7", all of which instructions the Court gave to the jury and marked each of them on the margins thereof "Given", said seven instructions being as follows, to-wit:

1. "The court instructs the jury that if you find for the plaintiff, you will be required to determine the amount of the plaintiff's damages. In determining the amount of damages the plaintiff is entitled to recover in this case, if any, the jury have a right to and they should take into consideration the facts and circumstances touching the plaintiff's physical injuries, if any, proved by the evidence; the nature and extent of said injury, if any, so
157 far as shown by the evidence; his suffering and disability, if any, resulting from such physical injuries and such future disability, if any, as the jury believe from the evidence before them in the case he has sustained or will sustain by reason of such injuries and may find for him such sum as in the judgment of the jury, under the instructions of the court in the case, will be a fair compensation for the injury and disability, if any, which he has sustained or will sustain, if any, so far as such damages, if any, are claimed and alleged in the declaration and proved on the trial."

2. "The Court instructs the jury that the questions of contributory negligence and assumption of risk by the plaintiff are not involved in this case, and such questions *show* have no influence with the jury in making up your verdict."

3. "The Court instructs the jury that the mere fact if it is a fact, that the defendant did not know that the plaintiff was under the age of sixteen (16) years at the time of his alleged injury, is of itself no defense to this suit."

4. "The Court instructs the jury that it is not material to the issues in this case how much less than sixteen (16) years old plaintiff was at the time he was injured, if you find from the evidence, that plaintiff was in fact less than sixteen (16) years old and that when injured he was employed upon a stamping machine by
158 the defendant, then in such case the defendant is guilty of a violation of the statute and the plaintiff is entitled to recover."

5. "The Court instructs the jury that if you find from a preponderance of the evidence that the defendant is guilty of a violation of the statute as charged in the plaintiff's third count of his second amended declaration and if you further find from the evidence that the plaintiff was injured as a result of the defendant's violation of said statute, if it did violate it, then you must find from the evidence that the defendant did not know before and at the time the plaintiff was injured, that he was under the age of sixteen (16) years."

6. The Court instructs the jury that if you find from the evi-

dence that the plaintiff was employed by the defendant in its factory, to work on a stamping machine, on April 26, 1907, and if you further find from the evidence that on April 26, 1907, the plaintiff was under the age of sixteen (16) years and that while so employed by the defendant he was injured in the manner and form as charged in the third count of his second amended declaration, then you will find the defendant guilty."

7. "The Court instructs the jury that all evidence relating to furnishing or using a "stick" in operating the stamping machine, or in placing or removing tins in said machine must be disregarded by the jury."

159 To the action of the Court in giving and reading to the jury the said instructions numbered "1", "2" "3", "4" "5", "6", and "7", and to the giving of each of them, the defendant, by its attorneys, then and there duly excepted.

And be it further remembered That before the arguments to the jury were begun, and at the same time the instructions hereinafter mentioned were presented to the Court by the plaintiff's attorneys, the defendant, by its attorneys, presented to the Court, and requested the Court to give to the jury instructions numbered 1 to 12 inclusive, and each of them, which instructions the Court marked on the margins thereof, the word "Given," and gave each thereof to the jury, which said instructions are as follows, to-wit:

1. "If the jury in this case, under the instructions of the court, finds from the evidence that the plaintiff is not entitled to recover, then you will not have occasion to consider at all the character or extent of plaintiff's injuries, whether serious or slight."

2. "The plaintiff is required by law to establish his case by a preponderance of the evidence before he can recover. If the plaintiff in this suit has not so established his case by a preponderance of the evidence, or if the jury are in doubt or unable to say on which side is the preponderance, or if the preponderance is in favor of the defendant, then the verdict should be not guilty. It is your duty to consider all the testimony calmly and dispassionately and ascertain on which side of any disputed issue in the case the preponderance is, and having ascertained on which side the preponderance

160 is, you should consider it in the light of all the instructions of the court and render a verdict in accordance with such preponderance and instructions of the court, free from passion, prejudice and sympathy. You have no right to go outside of this for any purpose whatever, nor to regard any statement on either side not based on the evidence."

3. "The court instructs the jury that they are not authorized to find a verdict of guilty in this case, upon the ground that the defendant employed the plaintiff contrary to law, unless the plaintiff has proved by a preponderance of all the evidence in the case, under the instructions of the court, that at the time he met with the injury in question he was under the age of sixteen years."

4. "The court instructs the jury that you are not required to believe any statement to be a fact simply because any witness or witnesses has or have sworn it to be a fact, if you believe from the

evidence that such witness or witnesses, has or have wilfully or knowingly sworn falsely to such alleged fact, even if such witness or witnesses be not directly contradicted with respect to such matter by some other testimony. In considering this case, and in passing upon your verdict, you are not required to set aside your own common observation and experience as men in the affairs of life, but on the other hand, you have the right in considering the testimony of this case to call to your aid your own common observation and experience as men in the affairs of life and you have the right on consideration of all the evidence in the case in the light of
161 your own common observation and experience as men in the affairs of life, to say where the truth lies upon any material fact in the case."

5. "The Court instructs the jury that the plaintiff, in order to recover in this action, must establish his case as alleged in his declaration or some count thereof by a preponderance of all the evidence; that such preponderance is not alone determined by the number of witnesses testifying to a particular fact or state of facts, but the jury should likewise consider the opportunity of the several witnesses for seeing or knowing the things concerning which they have testified, their conduct and demeanor while testifying, their interest, or lack of interest, if any, in the result of the suit, the probability or improbability of their several statements, in view of all the other evidential facts or circumstances proved on the trial, and from all these circumstances determine upon which side is the preponderance of the evidence."

6. "The court instructs the jury that if they believe from the evidence in this case that any witness has, or witnesses have, wilfully and knowingly sworn falsely to any matter or thing material to the issues in this case, then the jury are at liberty to disregard the entire testimony of such witness or witnesses, except in so far as such testimony may have been corroborated by other good and credible evidence in the case."

7. "The court instructs you that in weighing the evidence
162 you should take into consideration the interest or lack of interest that any witness may have in the result or outcome of this suit; while the law permits the plaintiff in a case to testify in his own behalf, nevertheless you have the right in weighing his evidence and determining how much credence is to be given to it, to take into consideration the fact that he is the plaintiff, and is interested in the result of the suit."

8. "The court instructs the jury that, if you believe from the evidence in this case, that the plaintiff at the time he obtained employment with the defendant intentionally misrepresented that he was sixteen years or more of age, when in fact he was not that old, such matter may be considered by the jury in considering the credibility of plaintiff as a witness in this action."

9. "The court instructs the jury that, under the law, the burden is not upon the defendant in this case to prove that at the time the plaintiff received the injury in question he was of the age of sixteen years; but the burden is upon the plaintiff to prove by a preponder-

ance of the evidence in this case that he was not, at the time referred to, of the age of sixteen years."

10. "The court instructs the jury that, if you believe from the evidence in this case that the plaintiff was instructed how to operate the machine in question, but that he violated said instructions; and
163 if you further believe from the evidence that the said plaintiff at the time of the accident in question was of the age of sixteen years; and if you further believe from the evidence that by reason of such violation of instructions, if any, he met with the injury in question; then the plaintiff cannot recover, and your verdict should be not guilty."

11. "The court instructs the jury that while they are judges of the credibility of witnesses, they have no right to disregard the testimony of an unimpeached witness, sworn on behalf of the defendant, simply because such witness was or is an employé of the defendant, but it is the duty of the jury to receive the testimony of such witness in the light of all the evidence, the same as they would receive the testimony of any other witness, and to determine the credibility of such employé by the same principles and tests by which they determine the credibility of any other witness."

12. "The court instructs the jury that, unless you believe from a preponderance of the evidence in the case, and under the instructions of the court, that the plaintiff was under the age of sixteen years at the time he received the injury in question, the plaintiff cannot recover, and your verdict should be not guilty."

Which said instructions numbered 1 to 7 inclusive, given on the part of the plaintiff, and instructions numbered 1 to 12 inclusive given on the part of the defendant, were all of the instructions given by the Court.

164 And be it remembered, that at the same time the defendant presented to the Court, and asked the Court to give to the jury the following instructions numbered 13 to 24 inclusive, which said instructions are as follows:

13. "The court instructs the jury that if they believe from the evidence in this case that the injury sustained by the plaintiff, Arthur Beauchamp, was purely accidental, that the jury should find the defendant not guilty."

14. The court instructs the jury that if you believe from the evidence that the injury to the plaintiff was caused by his placing his foot upon the treadle of the machine, causing the die to descend at a time when he had his hand in the machine and in a position where he could be hurt, then the plaintiff would not be entitled to recover under the first additional count of the second amended declaration."

15. "The court instructs the jury that the written declaration of the plaintiff under date of April 2, 1906, offered in evidence in this case, in which the plaintiff stated that his age was then sixteen years and ten months, may be taken into consideration by you upon the question of the plaintiff's age at the time he met with the injury in this case."

16. "The court instructs the jury that the plaintiff although a

minor, was bound to exercise such precaution for his own
165 safety as a boy of his age, intelligence experience and capacity would ordinarily exercise under the same or similar circumstances, and if you believe from the evidence in this case that the injury received by the plaintiff was received by him on account of his failure to exercise such ordinary care for his own safety, then your verdict must be not guilty, as to the first additional count of the second amended declaration."

17. "The court instructs the jury that, if you believe from the evidence in the case that the plaintiff, Arthur Beauchamp, although a minor, had arrived at an age to know, and did know and understand the conditions surrounding his place of employment, and did know the risk of danger, if any, on account of such conditions, and that, with such knowledge, he, the plaintiff, voluntarily continued in his employment without complaint as to such conditions, then he assumed the risk, and cannot recover for injuries received; and you should find the defendant not guilty as to the first additional count to the second amended declaration."

18. "The court instructs the jury that if they believe from the evidence in this case that the plaintiff, previous to undertaking the kind of work in which he was engaged at the time of the injury in question was occasioned, was advised by the defendant or its foreman of the dangers involved in such work, and that the plaintiff at the time of the injury had attained such age as to be capable of exercising such judgment and discretion as to know and avoid such dangers, and that the plaintiff then undertook to do such work, and was injured by disregarding the instructions and advice he had received, the plaintiff cannot recover under the first
166 additional count of the second amended declaration herein, and as to that count your verdict should be not guilty."

19. "The court instructs the jury that, if you believe from the evidence in this case that at the time plaintiff, Arthur Beauchamp, received the injury in question he was undertaking to place a piece of tin in the machine with his hand; and if you further believe from the evidence in this case that he had been warned and instructed not to use his hand in the placing of the tin in the machine; and if you further believe from the evidence that the proximate cause of the injury was the use by the plaintiff of his hand in placing the tin into the machine; if you believe he did so use his hand, then the plaintiff cannot recover under the first additional count of his second amended declaration and your verdict as to that count should be not guilty.

20. "The court instructs the jury that, if they believe from the evidence in this case that there was a safe way in which to do the work in question, but that the plaintiff did not choose to do the work in a safe way, but undertook to do the work in an unsafe way, and by reason thereof received the injury in question, then the plaintiff cannot recover under the first additional count to his second amended declaration."

21. "The court instructs the jury that, if they believe from the evidence in this case that the plaintiff was furnished a stick or im-

plement with which to place the tin in position in the machine and to remove the same therefrom after the same had been
167 stamped, and if you further believe from the evidence that, at the time plaintiff received the injury in question he was not using such stick or implement, if you believe one was so furnished, and that by reason of the failure to use such stick or implement, he met with the injury in question, then the plaintiff cannot recover under the first additional count of the second amended declaration herein, and as to that count, your verdict should be not guilty."

22. "The court instructs the jury that before the plaintiff is entitled to recover a verdict in this case upon the ground of the machine being out of repair, the burden is upon the plaintiff to prove by a preponderance of all the evidence in the case that at the time of the injury the said machine was out of repair, and that the proximate cause of the injury he received was the repeating of the machine by reason of its being out of repair."

23. "If the plaintiff has failed to prove, by a preponderance of the evidence in the case, any one of the foregoing propositions, then the plaintiff cannot recover under the said first additional count to the second amended declaration, and your verdict as to said count should be not guilty."

24. "The court instructs the jury that the plaintiff, by his first additional count to the second amended declaration, has alleged that in connection with the work which he was doing by the machine in question, it became necessary for him to put his hands into said machine in placing the tins thereon and removing the same therefrom; and that said machine on, to-wit, April 26, 1907, was out of repair, and not reasonably safe for the plaintiff to
168 use, for the reason that the portion of said machine which was designed to act in response to the movements of a certain lever operated by the plaintiff would not respond to the movements of said lever, but would repeat, and that the defendant well knew that the said machine was out of repair, and would repeat, and that the defendant well knew that said machine was dangerous and unsafe.

That in and by said count, the plaintiff further charges that he did not know, and had not equal means of knowledge with the defendant of the defective condition of said machine or its liability to repeat by reason of its defective condition, and that the plaintiff was all the time in the exercise of reasonable care for his own safety. That said plaintiff further charges in said count that on said date, while he was placing certain tins into said machine, for the purpose of stamping them, and before the lever which controlled the operations of said machine was moved, the said stamping machine, by reason of its defective condition, as aforesaid, did then and there repeat or descend upon the tins which the plaintiff was then and there placing in said machine, and the plaintiff's hand then and there became caught in said machine.

You are instructed, as a matter of law, that before the plaintiff can recover under said count of his declaration, he must prove

by a preponderance of the evidence in the case, under the instructions of the court,

First. That in doing the work in question, plaintiff was required, and that it was necessary for him, to put his hands into said machine in placing the tins in said machine and removing the same therefrom.

169 Second. That the said machine at the time of the accident in question was out of repair, in that it would not respond to the movements of the lever operated by the plaintiff and would repeat.

Third That the defendant knew that the machine was out of repair, in that regard, and that the defendant knew that said machine was dangerous and unsafe for the plaintiff to work upon, and that, he, the plaintiff, did not have equal means of knowledge with the defendant, regarding the condition of the machine, and did not know that it was defective, and that he was at the time in question in the exercise of reasonable care for his own safety.

Fourth That while the plaintiff was placing certain tins into the machine to be stamped, and before the lever which controlled the operation of said machine was moved, the said machine, by reason of the said defects, did repeat and descend upon the tins, thereby catching the fingers of the plaintiff's hand and crushing them."

Which said instructions so numbered "13", "14", "15", "16" "17", "18", "19", "20", "21", "22", "23", and "24", inclusive and each of them the Court refused to give to the jury and marked on the margin thereon "Refused." To which refusal of the Court to give said instructions so numbered "13", "14", "15", "16", "17", "18", "19", "20", "21", "22", "23", and "24", inclusive, as asked, the defendant, then and there, by its attorneys, duly excepted.

That thereupon, after the jury had been so instructed by the Court, they retired to deliberate upon their verdict, and the Court, at the request of the defendant submitted to the jury in writing, the following questions:

"Do you find, from a preponderance of all the evidence in the case, that the plaintiff was under the age of sixteen years, at the time of the accident in question, as charged in the third count

170 of the second amended declaration," and the jury returned to deliberate upon their verdict and thereafter returned in open court with their verdict, and the written question duly signed by all jurors, finding the defendant guilty, and assessing the plaintiff's damages at the sum of Four Thousand Five Hundred (4,500) dollars and finding in answer to the said written question, "Yes."

And be it further remembered, That thereupon the defendant, by its attorneys, moved the Court to set aside the said verdict, and to grant a new trial in said action, which said motion for a new trial was in writing, and in the words and figures following to-wit:

"STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

261,717. 17770.

ARTHUR BEAUCHAMP, by Nephtali Beauchamp, His Next Friend,
vs.
STURGES & BURN MANUFACTURING COMPANY, a Corporation.

Now comes the defendant, Sturges & Burn Manufacturing Company, by Bulkley, Gray & More, its attorneys, and moves the court to set aside the verdict of the jury heretofore rendered herein, and grant a new trial in this cause upon the following grounds:

First. The verdict is against the evidence.

Second. The verdict is against the weight of the evidence.

Third. The verdict is against the law.

Fourth. The Court erred in admitting improper evidence over the objection of the defendant.

Fifth. The Court erred in excluding proper evidence offered by the defendant.

171 Sixth. The Court erred in refusing to exclude and strike out, on motion of the defendant, incompetent, irrelevant and immaterial evidence, which was prejudicial to the rights and interests of the defendants.

Seventh. The Court erred in overruling defendant's motion, at the close of the plaintiff's evidence, to instruct the jury to find the defendant not guilty, and in marking "Refused" the written instruction tendered with said motion.

Eighth. The Court erred in overruling the defendant's motion made at the close of the plaintiff's evidence, to exclude from the jury all the plaintiff's evidence introduced under the third count of the second amended declaration, on the ground that the statute set forth in said count was unconstitutional, for the reasons set forth in said motion and in marking "Refused" the written instructions tendered with said motion.

Ninth. The Court erred in overruling defendant's motion, made at the close of all the evidence, to instruct the jury to find the defendant not guilty, and in marking "Refused" the written instruction tendered with said motion, separately from any other instruction tendered in the case.

Tenth. The Court erred in overruling defendant's motion made at the close of all the evidence, to exclude from the jury all the plaintiff's evidence introduced under the third count of the second amended declaration, on the ground that the statute in said count was unconstitutional, on the ground specified in said motion, and in marking "Refused" the written instruction tendered with said motion separately from any other instruction tendered in the case.

Eleventh. The Court erred in giving, on behalf of the plaintiff,

instructions numbered one, two, three, four, five, six and
172 seven, and erred in the giving of each of said instructions.

Twelfth. The Court erred in refusing to give, on behalf of the defendant, defendant's instructions numbered thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, and twenty-four, and erred in refusing each of said instructions.

Thirteenth. The jury disregarded the instructions of the Court given at the request of the defendant.

Fourteenth. The verdict returned by the jury is manifestly the result of passion, prejudice or sympathy.

Fifteenth. The damages awarded by the verdict ar- —.

BULKLEY, GRAY & MORE,
Attorneys for Defendant.

And thereupon said motion for a new trial came on for hearing, and thereafter on the nineteenth day of December, 1908, after hearing arguments of counsel thereon, the Court overruled said motion, and denied said defendant a new trial in said action; to which ruling of the Court the defendant, by its attorneys, then and there duly excepted, and thereafter, on the date last mentioned, the defendant, by its attorneys, made a motion in arrest of judgment, in said suit, which motion was in writing, and is in the words and figures following to-wit:

"STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

261,717. 17770.

ARTHUR BEAUCHAMP, by Nephtali Beauchamp, His Next Friend,
vs.
STURGES & BURN MANUFACTURING COMPANY, a Corporation.

173 Now comes the defendant, Sturges & Burn Manufacturing Company, by Bulkley, Gray & More, its attorneys, and moves the Court to arrest the judgment entered herein, for the reason that the statute set forth in the third count of the second amended declaration, upon which said judgment is based, is unconstitutional and void, because in violation of that part of Section thirteen, article four of the Constitution of the State of Illinois, which provides:

"No act hereafter passed shall embrace more than one subject, and that shall be expressed in the title. But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed."

and because also in violation of that part of Section One, of the Fourteenth Amendment of the Constitution of the United States, which provides:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. Nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

and because also in violation of Section Two, Article Two, of the Constitution of the State of Illinois, which provides:

"No person shall be deprived of life, liberty or property without due process of law."

BULKLEY, GRAY & MORE,
Attorneys for Defendant.

Which motion was by the court, overruled and denied to which ruling of the Court the defendant, by its attorneys, then and there duly excepted.

174 And thereupon on said 19th day of December, 1908, the Court entered judgment on the verdict, for the sum of Four Thousand Five hundred ($4,500.00) Dollars, as so returned; to which action of the Court in so entering said judgment, the defendant, by its attorneys, then and there duly excepted.

And thereupon the defendant, in open Court, prayed and was allowed an appeal from the judgment and rulings of the Court hereinbefore, to the Appellate Court of the First District of Illinois, upon filing an appeal bond in the sum of Six Thousand ($6,000) Dollars, to be approved by the Court within thirty days and leave was given the defendant to file a bill of exceptions within sixty days from said date; and afterwards, to-wit, on the 6th of January, 1909, an appeal bond by the said defendant, in the sum of Six Thousand ($6,000) Dollars, was approved by the Court, and filed herein.

And forasmuch as the matters above set forth do not fully appear of record, the defendant tenders this, his bill of exceptions, and prays that the same may be signed and sealed by the Judge of said Court, according to the statute in such case made and provided, which is accordingly done this 25 day of January, A. D. 1909.

MARCUS KAVANAUGH, [SEAL.]
Judge of the Superior Court of Cook County.

175 STATE OF ILLINOIS,
County of Cook, ss.

I, Charles W. Vail, Clerk of the Superior Court of Cook County, in and for the State of Illinois, and the keeper of the records, files and seals thereof, do hereby certify the above and foregoing to be a true, perfect and complete Transcript of the record, except the Bill of Exceptions the original of which is by stipulation of the parties incorporated herein and made a part hereof, in a certain cause lately pending in said Court, on the law side thereof, wherein Arthur Beauchamp, by, etc., was plaintiff and Sturges & Burn Manufacturing Company, a corp., defendant.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court, at Chicago, this 3rd day of February, A. D. 1909.

[SEAL.] CHARLES W. VAIL, *Clerk*.

In the Appellate Court of Illinois, First District, March Term, A. D. 1909.

ARTHUR BEAUCHAMP, by Nephtali Beauchamp, His Next Friend, Plaintiff and Appellee,

vs.

STURGES & BURN MANUFACTURING COMPANY, Defendant and Appellant.

Now comes the appellant, by Bulkley, Gray and More, its attorneys, and says that in the record and proceedings aforesaid, and in the rendition of the judgment aforesaid, there is manifest error, in this to-wit:

First. The Court erred in admitting in evidence incompetent, irrelevant and immaterial testimony, against the objection of the defendant.

Second. The Court erred in refusing to admit in evidence
176 competent, relevant and material evidence and testimony, offered by the defendant.

Third. The Court erred in overruling the defendant's motion, made at the close of all the evidence, to exclude all the evidence from the consideration of the jury, and instruct the jury to find the defendant not guilty.

Fourth. The Court erred in overruling the defendant's motion made at the close of all the evidence, to exclude from the jury all of the plaintiff's evidence introduced under the third count of the second amended declaration, on the ground that the statute pleaded in that count is unconstitutional and in violation of Section thirteen, article four of the Constitution of Illinois, of Section one of the Fourteenth amendment to the Constitution of the United States, and of Section two article two of the Constitution of the State of Illinois.

Fifth. The Court erred in giving to the jury, at the request of the plaintiff, instructions numbered 1, 2, 3, 4, 5, 6 and 7, and each and every of them.

Sixth. The court erred in refusing to give to the jury Instruction No. 15, requested by the defendant.

Seventh. The Court erred in overruling the defendant's motion for a new trial.

Eighth. The Court erred in overruling the defendant's motion in arrest of judgment.

Ninth. The Court erred in rendering judgment upon the verdict.

Tenth. The Court below erred in holding as a matter of law, and so ruling in the admission and rejection of evidence and in the giving and refusing of instructions, that plaintiff was entitled to recover if, as a matter of fact, at the time of the injury he was under

the age of sixteen years, regardless of fraud and false state-
177 ments made by him at the time of his employment, and for the purpose of obtaining such employment by deceiving the defendant as to his age.

Eleventh. The Court below erred in holding as a matter of law, and so ruling in the admission and rejection of evidence and in the giving and refusing of instructions, and in overruling defendant's motions to instruct for the defendant, for a new trial, and in arrest of judgment, that the defendant can be held liable in this action for damages occasioned by reason of an injury to the plaintiff while working at a machine in the defendant's factory, without any negligence on the part of the defendant other than the alleged violation of the statute set forth in the third count of plaintiff's second amended declaration in the employing and setting to work of plaintiff, at the machine in question; such alleged violation of the statute by the defendant being induced by the fraud and false statements of the plaintiff, as to his age at the time of employment.

Twelfth. The Court below erred in holding the statute pleaded in the third count of plaintiff's second amended declaration constitutional and valid.

Thirteenth. The Court erred in holding that the plaintiff had made out a cause of action, either in his pleadings or his proof.

By reason whereof, the appellant prays that the judgment of the Superior Court of Cook County and the State of Illinois, aforesaid, may be reversed.

BULKLEY, GRAY & MORE,
Att'ys for Def't. Appellant.

178 At a term of the Appellate Court begun and held at Chicago, on Tuesday, the fourth day of October, in the year of our Lord one thousand nine hundred and ten, within and for the First District of the State of Illinois.

Present:

Hon. Jesse Holdom, Presiding Justice.
Henry V. Freeman, Justice.
Frank Baker, Justice.
Alfred R. Porter, Clerk.
Christopher Strassheim, Sheriff.

Court met pursuant to law.
Court opened by proclamation.

MONDAY, *December* 19*th*, *A. D.* 1910.

Present:

Hon. Frank Baker, Presiding Justice.
Edward O. Brown, Justice.
Ben M. Smith, Justice.
Alfred R. Porter, Clerk.
Michael Zimmer, Sheriff.

No. 15442.

ARTHUR BEAUCHAMP, by NEPHTAHLI BEAUCHAMP, His Next Friend,
Appellee,
vs.
STURGES & BURM MANUFACTURING CO., a Corp., Appellant.

Appeal from Superior Court of Cook County.

Filed Jan. 17, 1911. J. McCan Davis, Clerk of Supreme Court.

Be it remembered, That on the nineteenth day of December A. D. 1910, it being one of the days of the said October term A. D. 1910, certain proceedings were had in said Court in said cause, and entered of record in the words and figures following, to-wit:

179 15442.

ARTHUR BEAUCHAMP, by NEPHTHALI BEAUCHAMP, His Next Friend
Appellee,
vs.
STURGES & BURN MFG. CO., Appellant.

Appeal Cook Superior.

This cause having this day been set for the hearing of oral arguments, came the appellant, by its counsel, and moved the Court, in open court, that said cause be transferred to the Supreme Court of Illinois because a constitutional question is involved in the decision hereof, and the appellee being present in court by counsel, and offering no objection: It is therefore ordered that said cause be transferred to said Supreme Court and the Clerk of this Court is hereby directed to transmit forthwith the transcript of record, abstracts, briefs and all files in said cause to the Clerk of the Supreme Court.

I, Alfred R. Porter, Clerk of the Appellate Court, in and for the First District of the State of Illinois, and keeper of the records, files and seals thereof, do hereby certify, That the foregoing is a true copy of a certain order made and entered of record on the nineteenth day of December A. D. 1910 in the said Appellate Court in the above entitled cause of record in my office.

In testimony whereof, I have set my hand and affixed the seal of the said Appellate Court, at Chicago, this twentieth day of December in the year of our Lord one thousand nine hundred and ten.

[SEAL.] ALFRED R. PORTER,
Clerk of the Appellate Court of the First District, Illinois.

180 And afterwards to-wit on the Twenty-second day of February, A. D. 1911, the same being one of the days of the term of Court aforesaid the following proceedings were by said Court had and entered of record, to-wit:

7584.

ARTHUR BEAUCHAMP by NEPHTALI BEAUCHAMP, His Next Friend, Appellee.
vs.
STURGES & BURN MANUFACTURING COMPANY, Appellant.

Appeal Superior Court, Cook.

Now on this day come the parties hereto and this being one of the days set apart for the call of the docket under the rules of this Court, and it appearing to the Court that —— ——, appellant, hath filed herein a duly certified transcript of the record and proceedings of the Court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said appellee —— —— having entered motion to affirm said judgment and for costs and procedendo, and said motions being taken under advisement for final hearing, and the Clerk of this Court reporting that said cause is now ready to be taken, and said cause having been argued orally by Almon W. Bulkley for appellant and Geo. Gorman for appellee is here submitted for the consideration and judgment of the Court:

Therefore it is ordered by the Court that this cause be and the same is hereby taken under advisement.

181 UNITED STATES OF AMERICA,
State of Illinois, ss:

At a term of the Supreme Court begun and held at Springfield on Tuesday, the fourth day of April, in the year of our Lord one thousand nine hundred and eleven, within and for the State of Illinois.

Present:
The Honorable Alonzo K. Vickers, Chief Justice.
Honorable James H. Cartwright, Justice.
Honorable William M. Farmer, Justice.
Honorable Frank K. Dunn, Justice.
Honorable John P. Hand, Justice.
Honorable Orrin N. Carter, Justice.
Honorable George A. Cooke, Justice.
William H. Stead, Attorney General.
Warren C. Murray, Marshal.

Attest:
J. McCAN DAVIS, *Clerk*.

Be it remembered, that afterward to-wit, on the 19th day of April, 1911, the opinion of the Court was filed in said cause and entered of record in the words and figures following, to-wit:

No. 7584.

ARTHUR BEAUCHAMP, by His Next Friend, Appellee,
v.
STURGES & BURM MANUFACTURING CO., Appellant.

Appeal from Superior Court, Cook.

182 In the Supreme Court, State of Illinois, February Term, 1911.

Ag. 55.

No. 7584.

ARTHUR BEAUCHAMP, by Next Friend,
vs.
STURGES & BURM MFG. COMPANY.

Appeal from Superior Court, Cook County.

HAND, *J.*:

This was an action on the case commenced by Arthur Beauchamp, by his next friend, in the Superior Court of Cook County against the Sturges & Burm Manufacturing Company to recover damages for personal injury sustained by the plaintiff while in the employ of defendant. The case was submitted to a jury upon a declaration consisting of one count, which averred that the plaintiff was under the age of sixteen years at the time of his employment; that he was employed by the defendant as a press-hand in its factory, to operate a punch press, which employment was prohibited by Section eleven of an act entitled, "An Act to Regulate the Employment of Children in the State of Illinois, and to Provide for the Enforcement thereof," Approved May 15th, 1903; in force July 1, 1903; (Hurd's Statutes 1909, p. 1082); that on the 26th day of April 1907, and while the plaintiff was operating said punch press, without fault on his part his right hand was caught in said punch press and was so crushed and mangled that it was necessary to amputate three of the fingers on said hand, and that the employment of the plaintiff, as aforesaid, in violation of the statute, was the proximate cause of his injury. The plea of the genral issue and a plea setting up the unconstitutionality of the section of the statute upon which said action was based were filed, and upon a trial a verdict was returned in favor of the plaintiff for the sum of $4500, upon which the court after overruling a motion for a new trial and in arrest of judgment, rendered judgment in favor of the plaintiff. The de-

fendant has brought the case direct to this court by appeal
183 on the ground that the section of the Statute upon which the action was based is unconstitutional.

At the close of all the evidence the defendant moved the court for a directed verdict on the grounds (1) that the violation of the Statute by the defendant did not give the plaintiff a cause of action; (2) that the plaintiff was estopped from maintaining his action because he represented to the defendant, at the time he was employed, that he was more than sixteen years of age; (3) that the section of the Statute upon which the plaintiff's cause of action was based is unconstitutional. The court overruled the motion and the action of the court in so doing has been assigned as error, and the three propositions contained in said motion have been elaborately argued by counsel in the briefs filed in this court and orally before the court.

The facts, in brief, are as follows: The plaintiff, at the time of his injury, lacked seven days of being sixteen years of age, and he had been in the employ of the defendant, when injured, about two weeks; that two employees of the defendant testified that at the time the plaintiff was employed by the defendant he represented to the agent of the defendant who employed him that he was past seventeen years of age but this was denied by the plaintiff; that the plaintiff was set to work upon a punch press by the defendant in its factory, that the punch press, while the plaintiff was at work therewith, repeated, and caught the right hand of the plaintiff and crushed and mangled it so that three fingers of that hand were necessarily amputated.

The first contention of the appellant is that the employment of the appellee in violation of the statute, and his injury, did not give to the appellee a cause of action against it as the statute does not in express terms provide that a child who is employed in viola-
184 tion of the statute, and while so employed is injured, shall have a right of action against his employer for the recovery of damages for such injury. We do not agree with this contention. The precise question here presented for decision was before this court in Strafford *vs.* Republic Iron Co. 238 Ill. 371, and was in that case decided adversely to the contention of the appellant. That was an action to recover for a personal injury by a boy thirteen years, eleven months and eight days old, who was injured in feeding angle-irons into a straightening machine in violation of the statute which prohibits the employment of a child in a hazardous business under the age of fourteen years. The court, in deciding that case, on page 378 of the opinion said: "The fact that the statute under consideration does not in express terms provide a liability in damages for its violation, as is done by certain statutes relating to mines and miners can make no difference under the construction given the statute in American Car Co. *vs.* Armentraut, 214 Ill. 509. The statute was enacted for the protection of the health and safety of children, and a liability for damages resulting from its violation is created whether it is expressly so declared in the statute or not." This decision accords with logic and reason and is supported by what we believe to be

the weight of authority, and we do not feel justified in receding from the holding announced therein.

It is next contended that the appellee is estopped from maintaining this action because, it is said, he represented to the appellant, at the time he was employed, that he was over seventeen years of age. If the appellee did misrepresent his age at the time he was employed, we are of the opinion he was not estopped from maintaining this action by reason of such misrepresentation. The law is, that if the appellant employed the appellee in violation of the statute it is liable if he was injured while in such employment. The case of
185 American Car Company *vs.* Armentraut, 214 Ill. 509 was an action on the case to recover damages by a boy who had been employed in violation of the statute prohibiting the employment of a child under fourteen years of age and who was injured while in such employment. Evidence was offered tending to show that at the time the boy was employed he stated he was sixteen years of age. The evidence so offered was excluded and thereafter the defendant asked an instruction to the effect that if the boy falsely represented at the time of his employment that he was sixteen years of age, and that he obtained his employment by reason of such false statement there could be no recovery. The instruction was refused, and it was held that the fact that the child falsely represented himself to be over fourteen years of age did not preclude him from maintaining an action to recover for an injury sustained while he was engaged in such employment or furnish a defense to his employer against such action, and that the evidence was properly excluded and the instruction was properly refused. That case is directly in point and controls this case, and it is necessary to cite other cases to show that a child under the prohibited age cannot, by a false statement as to his age, make his employment in violation of the statute lawful, and authorize the employer to do that which the statute in express terms says he shall not do. To so hold would be to hold a child by his false statement could, in effect, repeal the statute.

It is finally contended that section eleven of the statute is unconstitutional.

It is conceded by the appellant that the legislature, under the police power, has the right to pass legislation which will prohibit the employment of children of tender years in hazardous occupations, but it is said that a boy sixteen years of age should be held
186 to have arrived at the age of discretion, and that a statute which prohibits his employment in such occupations is an unlawful interference with his right of contract and is unconstitutional. The argument of the appellant is, therefore, that the statute is unconstitutional because it is unreasonable to prohibit a boy sixteen years of age from engaging in any class of employment, but it is not contended it is unconstitutional by reason of the lack of power in the legislature to legislate upon the subject—in other words, while the statute as applied to a boy fourteen years of age might be constitutional, as applied to a boy sixteen years of age it is unconstitutional. The question is therefore reduced to the proposition that the statute is an unreasonable exercise of the police power and

not a usurpation of that power. While it might be conceded that in a very flagrant case (which question we do not decide) the courts could hold a statute unconstitutional on the ground that it was an unreasonable exercise of the police power, still here it is only claimed that the age limit is fixed too high at which children may be lawfully employed in hazardous employments. Before the courts would assume to interfere and hold a statute unconstitutional, the age limit would necessarily have to be fixed so high as to show clearly and beyond all question that the age at which it was fixed was unlawful. We do not think the statute in question is unconstitutional as an unreasonable exercise of the police power. In Strafford v. Republic Iron Company, supra, on page 375 it was said:

"The statute in express and positive language forbade the employment of appellee in the business appellant was engaged in, in any capacity, and in the Armentraut case it was said such construction should be given the act as to effectuate its purpose, if it can be done without violence to the letter of the statute. The validity of such statutes has been sustained as an exercise of the police power of the State upon the ground that the State is interested in the protection of children, and to that end may pass laws preventing their
187 employment at a tender age, when they should be in school, in occupations that expose them to danger of being crippled and maimed for life, and thereby rendered less capable of taking care of themselves and discharging the duties of citizenship on arriving at maturity. The wisdom and humanity of the statute cannot be questioned, and in the Armentraut case we held that an employer must know, at his peril, that children employed by him are of an age that he may lawfully employ them."

In Starnes v. Albion Manufacturing Company, 146 N. C. 556, the Supreme Court of North Carolina said in a case where a similar question was at issue:

Child labor laws have been adopted in nearly all the states of this Union and Canada, and are in force in nearly all the governments of Europe and of the Australian continent. They are founded upon the principle that the supreme right of the state to the guardianship of children controls the natural rights of the parent when the welfare of society or of the children themselves conflict with paternal right. In this country their constitutionality, so far as we can ascertain, has never been successfully assailed. The supervision and control of minors is a subject which has always been regarded as within the province of the legislative authority. How far it shall be exercised is a question of expediency, which is the province of the legislature to determine."

In City of New York vs. Chelsea Jute Mills 88 N. Y. Supp. 1085, in a case growing out of the violation of the statute prohibiting the employment of children under fourteen years of age, the court said:

"This statute is assailed for unconstitutionality. No particular provision of the state or federal constitution is assigned. It is claimed to be 'an unwarranted, illegal and unconstitutional deprivation of the liberties of the defendant.' * * * The integrity of the statute is upheld under the police power of the state. A statute

should not be declared unconstitutional unless required by the most cogent reason or compelled by unanswerable grounds. Every presumption is in favor of the constitutionality of a statute. It is difficult to satisfactorily define the police power to cover every case, but it includes such legislative measures as promote the health, safety or morals of the community. It is true that the legislature must respect freedom of contract and the right to live and work where and how one will, yet the weal of the people is the supreme law. The Legislature may not disregard it, private interests are subordinated to the public good, and even a statute opposed to natural justice and equity, requiring vigilance or causing vexation or annoyance, will be upheld if within constitutional limitations. Much more potent, if possible, is a statute seeking the protection of children. They are the wards of the state, which is particularly interested in
188 their well-being as future members of the body politic, and has an inherent right to protect itself and them against the baneful effects of ignorance, infirmity or danger to life and limb."

In Inland Steel Co. vs. Yedinak, 87 N. E. Rep. 229, a similar statute was before the Supreme Court of Indiana. In answering the charge that appellant was denied the equal protection of the laws and was deprived of property without due process of law, that court said:

Children under 16 years of age are wards of the state and are preeminently fit subjects for the protecting care of its police power. This power is an inherent attribute of sovereignty, and may be exercised to conserve and promote the safety, health, morals and general welfare of the public. The liberty and property of the individual citizens are held subject to such reasonable conditions as the state may deem necessary to impose in the exercise of this power. Such regulation and conditions will not fall within the inhibitions of the Fourteenth Amendment unless they are palpably arbitrary, extravagant and unreasonably hurtful and unnecessarily and unjustly interfere with private right."

It is also urged that section eleven of the act is unconstitutional because the subject matter in that section is not expressed in the title of the act. In Maule Coal Co. vs. Parthenheimer, 155 Ind. 100, it was said:

"To express the subject of a statute in the title, in compliance with the requirement of the constitution, no particular form or terms are exacted, nor is it essential that such subjects be expressed with precision. The title will sufficiently conform to the command of the constitution if it be so framed and worded as fairly to apprise the legislators and the public in general of the subject matter of the legislation, so as to reasonably lead to an inquiry into the body of the bill. The constitutional requirement may be interpreted to mean that the act and its title must correspond—not literally but substantially; and such correspondence is to be determined in view of the subject matter to which the legislation relates."

The last clause of the title is, we think, broad enough to cover any reasonable regulation which would tend to insure the enforcement of [illegible] of the act which was to protect children from en-

gaging in employments where their immaturity, inexperience and heedlessness might cause them to be injured, which object,
189 we think, would be materially advanced by a provision imposing a personal liability upon an employer to a child, who should employ a child in violation of the statute. The constitutional provision that "no act hereafter passed shall embrace more than one subject and that shall be expressed in the title," must have a reasonable construction and be liberally construed in favor of the validity of the enactment. (Blake v. People, 109 Ill. 504) and any means which are reasonably adapted to secure the object indicated in the title may be included in the body of the act. Larned vs. Tiernan 110 Ill. 173.

The right to maintain a civil action against the employer arises under the statute by implication and a construction which authorizes the maintenance of such action does not render section eleven of the act unconstitutional by reason of the fact that a new liability has been created by that section of the statute which is beyond the scope of the title of said act.

Finding no reversible error in this record the judgment of the Superior Court will be affirmed.

Judgment Affirmed.

190 UNITED STATES OF AMERICA,
State of Illinois, ss:

At a term of the Supreme Court begun and held at Springfield on Tuesday, the fourth day of April, in the year of our Lord one thousand nine hundred and eleven, within and for the state of Illinois.

Present:

The Honorable Alonzo K. Vickers, Chief Justice.
Honorable James H. Cartwright, Justice.
Honorable William M. Farmer, Justice.
Honorable Frank K. Dunn, Justice.
Honorable John P. Hand, Justice.
Honorable Orrin N. Carter, Justice.
Honorable George A. Cooke, Justice.
William H. Stead, Attorney General.
Warren C. Murray, Marshal.

Attest:

J. McCAN DAVIS, *Clerk*.

Be it remembered, that to-wit: on the 19th day of April, A. D. 1911, the same being one of the days of the said April term of said Supreme Court, certain proceedings were had in said Court and entered of record in the words and figures following, to-wit:

No. 7584.

ARTHUR BEAUCHAMP, by His Next Friend, Appellee,
vs.
STURGES & BURN MANUFACTURING COMPANY, Appellant.

Appeal from Superior Court, Cook.

APRIL 19, A. D. 1911.

And now on this day, this cause having been argued by counsel, and the Court having diligently examined and inspected, as well the record and proceedings aforesaid, as the matters and things therein assigned for Error, and being now sufficiently advised of and concerning the premises, for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the Judgment aforesaid, is there anything erroneous, vicious or defective, and that in that record there is no error:

Therefore, it is considered by the Court that the Judgment of the Superior Court aforesaid be affirmed in all things, and stand in full force and effect, notwithstanding the said matters and things therein assigned for error. And it is further considered by the Court that the said Appellee recover of and from the said Appellant costs by him in this behalf expended, to be taxed and that he have execution therefor.

191 At a Supreme Court begun and held at Springfield on Tuesday, the sixth day of June, in the year of our Lord one thousand nine hundred and eleven, within and for the State of Illinois.

Present:

The Honorable Orrin N. Carter, Chief Justice.
Honorable James H. Cartwright, Justice.
Honorable William M. Farmer, Justice.
Honorable Frank K. Dunn, Justice.
Honorable John P. Hand, Justice.
Honorable Alonzo K. Vickers, Justice.
Honorable George A. Cooke, Justice.
William H. Stead, Attorney General.
Warren C. Murray, Marshal.

Attest:

J. McCAN DAVIS, *Clerk*.

Be it remembered, to-wit, on the 8th day of June A. D. 1911, the same being one of the days of the term of Court aforesaid, the following proceedings were by said Court had and entered of record, to-wit:

No. 7584.

ARTHUR BEAUCHAMP, by His Next Friend, Appellee,
vs.
STURGES & BURN MANUFACTURING COMPANY, Appellant.

Appeal Superior Court, Cook.

Now on this day the Court having duly considered the petition for rehearing filed by appellant, and the Court being now fully advised in the premises doth overrule the prayer of the petition and denies a rehearing of this cause.

192 *Authentication of Record.*

SUPREME COURT,
State of Illinois, ss:

I, J. McCan Davis, Clerk of said Court, do hereby certify that the foregoing is a true, full and complete transcript of the record and proceedings in the case of Arthur Beauchamp, by Nephtali Beauchamp, his next friend, Plaintiff in error, vs. Sturges & Burn Manufacturing Company, a corporation, Defendant in error, and also of the opinion of the court rendered therein, as the same now appears on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Supreme Court, at Springfield, this 1st day of July A. D. 1911.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

J. McCAN DAVIS,
Clerk Supreme Court.

193 Be it remembered, to-wit, that on the 17th day of June A. D. 1911, there was duly filed by the Appellant Sturges & Burn Manufacturing Company, a corporation, in the Office of the Clerk of the Supreme Court of Illinois, a petition for writ of error with assignments of error from the Supreme Court of the United States to the Supreme Court of Illinois addressed to the Hon. Orrin N. Carter, Chief Justice of the Supreme Court of Illinois, with the endorsement by the Chief Justice upon the said petition allowing said writ of error, which documents are in words and figures as follows to-wit:

194 UNITED STATES OF AMERICA,
State of Illinois:

To the Honorable Orrin N. Carter, Chief Justice of the Supreme Court of the State of Illinois:

The Petition of Sturges & Burn Manufacturing Company respectfully shows that on the 19th day of April, A. D. 1911, the Supreme

Court of the State of Illinois rendered a final judgment against your Petitioner in a certain cause wherein Arthur Beauchamp, by Nephtali Beauchamp, his next friend, was Plaintiff, and your Petitioner was Defendant, affirming a judgment of the Superior Court of Cook County, Illinois, for the sum of Four Thousand, Five Hundred Dollars ($4,500) and costs, and awarded execution thereon; that on June 8th, A. D. 1911, said court denied to your Petitioner a rehearing of said cause, as will appear by reference to the record and proceedings in said cause, and that said court is the highest court of said State in which a decision in said suit could be had.

And your Petitioner claims the right to remove said judgment to the Supreme Court of the United States by writ of error, under Section 709 of the Revised Statutes of the United States, as amended by the Act of February 18, 1875, because there is drawn in question the validity of a statute of, or an authority exercised under, the State of Illinois, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of their validity.

And because your Petitioner claimed, and still claims title, right, privilege or immunity under the Constitution of the United
195 States, and the decision is against such title, right, privilege or immunity specially set up and claimed by your Petitioner, under such Constitution, as appears by the record of the proceedings in said cause, which is herewith submitted.

Wherefore, your Petitioner prays the allowance of a writ of error, returnable into the Supreme Court of the United States, and for citation, and an order fixing the amount of a supersedeas bond.

(Assignment of Errors herewith.)

ALMON W. BULKLEY,
EDWARD E. GRAY,
CLAIR E. MORE,
Attorneys for Petitioner.

STATE OF ILLINOIS,
Supreme Court, ss:

Let a writ of error issue upon the execution of a bond by Sturges & Burn Manufacturing Company to Arthur Beauchamp, in the sum of Six Thousand Dollars ($6,000), such bond when approved, to act as a supersedeas.

Dated June 17th, 1911.

ORRIN N. CARTER,
Chief Justice, Supreme Court of Illinois.

[Endorsed:] Supreme Court of Illinois. Arthur Beauchamp, by Nephtali Beauchamp, his next friend, Plaintiff, vs. Sturges & Burn Manufacturing Company, Defendant. Petition for Writ of Error and Order Fixing Amount of Supersedeas Bond. Filed Jun- 17, 1911. J. McCan Davis, Clerk of Supreme Court. Bulkley, Gray & More, 518 Home Insurance Bldg., Chicago.

196 Supreme Court of Illinois.

No. 7584.

ARTHUR BEAUCHAMP, by NEPHTALI BEAUCHAMP, His Next Friend, Plaintiff (Appellee),
vs.
STURGES & BURN MANUFACTURING COMPANY, Defendant (Appellant).

Assignment of Errors.

Now comes the above defendant, and files herewith its Petition for a writ of error, and says that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Illinois in the above entitled matter, there is manifest error in this, to-wit, the Supreme Court of Illinois erred in holding and deciding that Section Eleven of an Act of the General Assembly of the State of Illinois, entitled "An Act to Regulate the Employment of Children in the State of Illinois, and to Provide for the Enforcement thereof," approved May 15, 1903, in force July 31, 1903, to be valid. The validity of said Section Eleven of said Act was denied and drawn in question by the defendant on the ground of its being repugnant to the provisions of Section One of the Fourteenth Amendment to the Constitution of the United States.

The said errors are more particularly set forth as follows:

The Supreme Court of Illinois erred in that it did not hold and decide said Section Eleven of said Act to be void for the reason that—

(1) Said Act (Section Eleven thereof), as construed and
197 interpreted by the Supreme Court of Illinois, did abridge the privileges and immunities of this defendant, as guaranteed by Section One of the Fourteenth Amendment of the Federal Constitution.

(2) Said Act (Section Eleven thereof), as construed and interpreted by the Supreme Court of Illinois, violated the provision guaranteeing due process of law, and

(3) Said Act (Section Eleven thereof), as construed and interpreted by the Supreme Court of Illinois, violated the provision guaranteeing the equal protection of the laws, for which errors the defendant, Sturges & Burn Manufacturing Company, prays that the said judgment of the Supreme Court of the State of Illinois, rendered the 19th day of April, A. D. 1911, be reversed, and a judgment rendered in favor of the defendant, Sturges & Burn Manufacturing Company for costs.

ALMON W. BULKLEY,
EDWARD E. GRAY,
CLAIR E. MORE,
Attorneys for Defendant.

[Endorsed:] Supreme Court of Illinois. No. 7584. Arthur Beauchamp, by Nephtali Beauchamp, his next friend, Plaintiff (Appellee), vs. Sturges & Burn Manufacturing Company, Defendant (Appellant). Assignment of Errors. Filed Jun- 17, 1911. J. McCan Davis, Clerk of Supreme Court. Bulkley, Gray & More, 518 Home Insurance Bldg., Chicago.

198 Be it remembered that on the 17th day of June, A. D. 1911, there was duly filed in the office of the Clerk of the Supreme Court of Illinois by Sturges & Burn Manufacturing Company, appellant, an original bond for writ of error from the Supreme Court of the United States to the Supreme Court of Illinois in words and figures as follows, to-wit:

199 Supreme Court of Illinois.

ARTHUR BEAUCHAMP, by NEPHTALI BEAUCHAMP, His Next Friend, Plaintiff (Defendant in Error),

vs.

STURGES & BURN MANUFACTURING COMPANY, Defendant (Plaintiff in Error).

Know all men by these presents, That we, Sturges & Burn Manufacturing Company, a corporation organized and incorporated under the laws of the State of Illinois, as Principal, and Frank Sturges, of Chicago, Cook County, Illinois, as Surety, are held and firmly bound unto Arthur Beauchamp, in the sum of Six Thousand Dollars ($6,000), to be paid to the said Arthur Beauchamp, to which payment well and truly to be made, we bind ourselves jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 15th day of June, A. D. 1911.

Whereas, the above named Plaintiff in error seeks to prosecute its writ of error to the United States Supreme Court to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Illinois:

Now therefore the condition of this obligation is such that if the above named Plaintiff in error shall prosecute its said writ of error to effect and answer all costs and damages that may be adjudged if it shall fail to make good its plea, then this obligation to be void, to otherwise remain in full force and effect.

STURGES & BURN MANUFACTURING COMPANY,
By FRANK STURGES, *Its President.*
FRANK STURGES. [SEAL.]

Attest:
W. B. BURN,
Secretary.

[CORPORATE SEAL.]

Bond approved and to operate as a supersedeas.

ORRIN N. CARTER,
Chief Justice, Supreme Court of Illinois.

O. K.

GEO. E. GORMAN,
Att'y for Arthur Beauchamp.

200 Be it remembered, that on the 17th day of June, A. D. 1911, there was duly filed in the office of the Clerk of the Supreme Court of Illinois, an original writ of error, which is hereby attached and is in words and figures as follows, to-wit:

201 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Illinois, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law of the said State in which a decision could be had in the said suit between Arthur Beauchamp and Sturges & Burn Manufacturing Company, a corporation, where was drawn in question the validity of a statute of said State, on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of such validity; and wherein was drawn in question the construction of certain clauses of the Constitution of the United States, and the decision was against the rights set up and claimed under such clauses of the said Constitution; a manifest error hath appeared to the great damage of the said Sturges & Burn Manufacturing Company, appellant, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty (30) days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according
202 to the laws and customs of the United States, should be done.

Witness the Honorable Edward Douglas White, Chief Justice of the United States, the 17th day of June, in the year of our Lord one thousand nine hundred and eleven.

[The Seal of the Circuit Court of the United States, South. Dist., Ill.]

JAMES T. JONES,
Clerk Circuit Court United States for Southern Division of Southern District of Illinois.

Allowed:

ORRIN N. CARTER,
Chief Justice, Supreme Court of Illinois.

[Endorsed:] Supreme Court of Illinois. Arthur Beauchamp, by Nephtali Beauchamp, his next friend, Plaintiff, vs. Sturges & Burn Manufacturing Company, Defendant. Writ of Error. Filed Jun-17 1911. J. McCan Davis, Clerk of Supreme Court. Bulkley, Gray & More, 518 Home Insurance Bldg., Chicago.

203 *Certificate of Lodgment.*

SUPREME COURT,
State of Illinois, ss:

I, J. McCan Davis, Clerk of the Supreme Court, do hereby certify that there was lodged with me as such Clerk on the 17th day of June A. D. 1911, in the matter of Arthur Beauchamp by Nephtali Beauchamp, his next friend, Appellee, vs. Sturges & Burn Manufacturing Company, Appellant.

1. The original bond, of which a copy is herein set forth.
2. A copy of the writ of error to file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Supreme Court, at Springfield, this 15th day of July, 1911.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

J. McCAN DAVIS,
Clerk Supreme Court.

204 Be it remembered, to-wit, on the Twentieth day of June A. D. 1911, a certain Citation was filed in the office of the Clerk of the Supreme Court in words and figures as follows to-wit:

205 UNITED STATES OF AMERICA, *ss:*

To Arthur Beauchamp, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, within thirty (30) days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Illinois, wherein Sturges & Burn Manufacturing Company, a corporation of the State of Illinois, is Plaintiff in Error, and you are Defendant in Error, to show cause, if any there be, why the judgment rendered against the said Plaintiff in Error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, The Honorable Orrin N. Carter, Chief Justice of the Supreme Court of the State of Illinois, this 17th day of June, A. D. 1911.

ORRIN N. CARTER, [SEAL.]
Chief Justice of the Supreme Court of Illinois.

CHICAGO, ILLINOIS, *June 19th*, 1911.

We, the attorneys of record for the Defendant in Error in the above entitled cause, hereby acknowledge due service of the above citation, and enter an appearance in the Supreme Court of the United States.

GEO. E. GORMAN AND
WILLIAM BIGANE,
Attorneys for Defendant in Error.

[Endorsed:] Supreme Court of Illinois. Arthur Beauchamp, by Nephtali Beauchamp, his next friend, Plaintiff, vs. Sturges & Burn Manufacturing Company, Defendant. Citation. Filed Jun- 20 1911. J. McCan Davis, Clerk of Supreme Court. Bulkley, Gray & More, 518 Home Insurance Bldg., Chicago.

206 *Return to Writ.*

UNITED STATES OF AMERICA,
Supreme Court of Illinois, ss:

In obedience to the commands of the within writ I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the seal of said Supreme Court of Illinois, in the City of Springfield, this 15th day of July A. D. 1911.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

J. McCAN DAVIS,
Clerk Supreme Court of Illinois.

Endorsed on cover: File No. 22,796. Illinois Supreme Court. Term No. 380. Sturges & Burn Manufacturing Company, plaintiff in error, vs. Arthur Beauchamp. Filed July 7th, 1911. File No. 22,796.

16

Supreme Court, U. S.
FILED.
SEP 17 1913
JAMES H. McKENNEY,
CLERK.

No. 54

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1913.

No. 880.

STURGES & BURN MANUFACTURING CO.,
Plaintiff in Error.

vs.

ARTHUR BEAUCHAMP,
Defendant in Error.

In Error to the Supreme Court of the State of Illinois.

Brief and Argument for Plaintiff in Error.

BULKLEY, GRAY & MORE,
Attorneys for Plaintiff in Error.

CHAMPLIN LAW PRINTING CO.

INDEX.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1913.

No. 380

STURGES & BURN MANUFACTURING CO.,
Plaintiff in Error.

vs.

ARTHUR BEAUCHAMP,
Defendant in Error.

In Error to the Supreme Court of the State of Illinois.

Brief and Argument for Plaintiff in Error.

MAY IT PLEASE THE COURT:

The questions presented by this record are:

(1) *May a State* IN THE EXERCISE OF ITS POLICE POWERS LAWFULLY TAKE THE PROPERTY OF AN EMPLOYER AND GIVE IT TO AN INJURED EMPLOYEE TO COMPENSATE HIM FOR AN INJURY SUSTAINED, SOLELY AS THE RESULT OF HIS OWN FRAUD AND DECEIT IN OBTAINING EMPLOYMENT IN VIOLATION OF THE STATUTE? i. e., MAY THE STATE, UNDER GUISE OF ITS POLICE POWERS, REVERSE THAT FUNDAMENTAL MAXIM OF THE LAW, "*nemo ex proprio dolo consequitur actionem*," NO ONE ACQUIRES A RIGHT OF ACTION FROM HIS OWN WRONG? And (2) If so, may it do so through the action of its judicial department?

The statute in question is section 11 of the following act of the General Assembly of Illinois, entitled, "AN ACT TO REGULATE THE EMPLOYMENT OF CHILDREN IN THE STATE OF ILLINOIS, AND TO PROVIDE FOR THE ENFORCEMENT THEREOF. Approved May 15, 1903. In force July 1, 1903. Laws of 1903, p. 187."

1. CHILD UNDER FOURTEEN YEARS. *Be it enacted by the People of the State of Illinois represented in the General Assembly:* That no child under the age of fourteen years shall be employed, permitted or suffered to work at any gainful occupation in any theatre, concert hall or place of amusement where intoxicating liquors are sold or in any mercantile institution, store, office, hotel, laundry, manufacturing establishment, bowling alley, passenger or freight elevator, factory or workshop or as a messenger or driver therefor, within this state. That no child under fourteen years of age shall be employed at any work performed for wages or other compensation, to whomsoever payable, during any portion of any month when the public schools of the town, township, village or city in which he or she resides are in session, nor be employed at any work before the hour of seven o'clock in the morning or after the hour of six o'clock in the evening. *Provided*, that no child shall be allowed to work more than eight hours in any one day.

2. REGISTER. It shall be the duty of every person, firm or corporation, agent or manager of any firm or corporation employing minors over fourteen years and under sixteen years of age in any mercantile institution, store, office, hotel, laundry, manufacturing establishment, bowling alley, theater, concert hall or place of amusement, passenger or freight elevator, factory or workshop or as messenger or driver therefor, within this state, to keep a register in said mercantile institution, store, office, hotel,

laundry, manufacturing establishment, bowling alley, theatre, concert hall or place of amusement, factory or workshop in which said minors shall be employed or permitted or suffered to work, in which register shall be recorded the name, age and place of residence of every child employed or suffered or permitted to work therein, or as messenger or driver therefor, over the age of fourteen and under the age of sixteen years; and it shall be unlawful for any person, firm or corporation, agent or manager, of any firm or corporation to hire or employ, or to permit or suffer to work in any mercantile institution, store, office, hotel, laundry, manufacturing establishment, bowling alley, theater, concert hall or place of amusement, passenger or freight elevator, factory or workshop, or as messenger or driver therefor, any child under the age of sixteen years and over fourteen years of age, unless there is first produced and placed on file in such mercantile institution, store, office, hotel, laundry, manufacturing establishment, bowling alley, factory or workshop, theater, concert hall or place of amusement, an age and school certificate approved as hereinafter provided.

3. Wall Lists. Every person, firm or corporation, agent or manager of a corporation employing or permitting or suffering to work five or more children under the age of sixteen years and over the age of fourteen in any mercantile institution, store, office, laundry, hotel, manufacturing establishment, factory or workshop, shall post and keep posted in a conspicuous place in every room in which such help is employed, or permitted or suffered to work a list containing the name, age and place of residence of every person under the age of sixteen years employed, permitted or suffered to work in such room.

4. Age and School Certificate. No child under sixteen years of age and over fourteen years of age shall be employed in any mercantile

institution, store, office, hotel, laundry, manufacturing establishment, bowling alley, theater, concert hall, or place of amusement, passenger or freight elevator, factory or workshop, or as messenger or driver therefor, unless there is first produced and placed on file such mercantile institution, store, office, hotel, laundry, manufacturing establishment, bowling alley, theater, concert hall or place of amusement, factory or workshop, and accessible to the state factory inspector, assistant factory inspector or deputy factory inspector, an age and school certificate as hereinafter prescribed; and unless there is kept on file and produced on demand of said inspectors of factories a complete and correct list of all the minors under the age of sixteen years so employed who cannot read at sight and write legibly simple sentences, unless such child is attending night school as hereinafter provided.

5. Age and School Certificates.. How Approved. An age and school certificate shall be approved only by the superintendent of schools or by a person authorized by him in writing; or where there is no superintendent of schools, by a person authorized by the school board; *provided,* That the superintendent or principal of a parochial school shall have the right to approve an age and school certificate and shall have the same rights and powers as the superintendent of public schools to administer the oaths herein provided for children attending parochial schools; *provided further,* That no member of a school board or other person authorized as aforesaid shall have authority to approve such certificates for any child then in or about to enter his own establishment, or the employment of a firm or corporation of which he is a member, officer or employee. The person approving these certificates shall have authority to administer the oath provided herein, but no fee shall be charged therefor. It shall be the duty of the school board or local school authorities to des-

ignate a place (connected with their offices, when practicable) where certificates shall be issued and recorded, and to establish and maintain the necessary records and clerical service for carrying out the provisions of this act.

6. Proof of Age. An age and school certificate shall not be approved unless satisfactory evidence is furnished by the last school census, the certificate of birth or baptism of such child, the register of birth of such child with a town or city clerk, or by the records of the public or parochial schools, that such child is of the age stated in the certificate; *Provided*, That in cases arising wherein the above proof is not obtainable, the parent or guardian of the child shall make oath before the juvenile or county court as to the age of such child, and the court may issue to said child an age certificate as sworn to.

7. Employment Ticket. The age and school certificate of a child under sixteen years of age shall not be approved and signed until he presents to the person authorized to approve and sign the same, a school attendance certificate, as hereinafter prescribed, duly filled out and signed. A duplicate of such age and school certificate shall be filled out and shall be forwarded to the state factory inspector's office. Any explanatory matter may be printed with such certificate in the discretion of the school board or superintendent of schools. The employment and the age and school certificates shall be separately printed and shall be filled out, signed and held or surrendered as indicated in the following forms:

School Certificate.

(Name of school.) (City or town and date.)

This certifies (name of minor) of the ..th grade, can read and write legibly simple sentences.

This also certifies that according to the records of this school, and in my belief, the said

(name of minor) was born at (name of city or town) in (name of county) on the (date) and is now (number of years and months) old.

(Name of parent or guardian),
(Residence).

(Signature of teacher).....grade.

correct. (Name of principal).
(Name of school).

Evening School Attendance Certificate.

(Date.)

This certifies that (name of minor) is registered in and regularly attends the..... evening school. This also certifies that according to the records of my school and in my belief the said (name of minor) was born at (name of city or town) on the ..... day of (year), and is now (number of years and months) old.

(Name of parent or guardian),
(Residence.)
(Signature of teacher.)
(Signature of principal.)

Age and School Certificate.

This certifies that I am (father, mother, guardian or custodian) of (name of minor), and that (he or she) was born at (name of town or city) in the (name of county, if known) and state or county of ....., on the (day of birth and year of birth) and is now (number of years and months) old.

(Signature of parent, guardian or custodian.)
(City or town and date.)

There personally appeared before me the above named (name of person signing) and made oath that the foregoing certificate by (him or her) signed is true to the best of (his or her) knowledge. I hereby approve the foregoing certificate of (name of child), height (feet and inches), weight ....., complexion (fair or dark), hair, (color), having no sufficient reason to doubt that (he or she) is of the age therein certified.

Owner of Certificate. This certificate belongs to (name of child in whose behalf it is drawn) and is to be surrendered to (him or her) whenever (he or she) leaves the service of the corporation or employer holding the same; but if not claimed by said child within thirty days from such time it shall be returned to the superintendent of schools, or where there is no superintendent of schools, to the school board. (Signature of person authorized to approve and sign, with official character authority.)

(Town or city, and date.)

Illiteracy. In the case of a child who cannot read at sight and write legibly simple sentences, the certificate shall continue as follows, after the word "sentences":

"I hereby certify that (he or she) is regularly attending the (name of public or parochial evening school)." This certificate shall continue in force just as long as the regular attendance of said child at said evening school is certified weekly by the teacher and principal of said school.

Evening School. In any city or town in which there is no public or parochial evening school, an age and school certificate shall not be approved for a child under the age of sixteen years who can not read at sight and write legibly simple sentences. When the public or parochial evening schools are not in session an age and school certificate shall not be approved for any child who can not read at sight and write legibly simple sentences. The certificate of the principal of a public or parochial school shall be *prima facie* evidence as to the literacy or illiteracy of the child.

8. Schooling Required. No person shall employ any minor over fourteen years of age and under sixteen years, and no parent, guardian or custodian shall permit to be employed any such minor under his control, who can not read at sight and write legibly simple senten-

ces, while a public evening school is maintained in the town or city in which such minor resides, unless such minor is a regular attendant at such evening school.

9. Duties of State Inspectors of Factories. The state inspector of factories, his assistants or deputies, shall visit all mercantile institutions, stores, offices, laundries, manufacturing establishments, bowling alleys, theaters, concert halls or places of amusement, factories or workshops, and all other places where minors are or may be employed, in this state, and ascertain whether any minors are employed contrary to the provisions of this act. Inspectors of factories, may require that age and school certificates, and all lists of minors employed in such factories, workshops, mercantile institutions and all other places where minors are employed as provided for in this act, shall be produced for their inspection, on demand.

And, *provided, further*, that upon written complaint to the school board or local school authorities of any city, town, district or municipality, that any minor (whose name shall be given in such complaint) is employed in any mercantile institution, store, office, laundry, manufacturing establishment, bowling alley, theater, concert hall or place of amusement, passenger or freight elevator, factory or workshop, or as messenger or driver therefor, contrary to the provisions of this act, it shall be the duty of such school board or local school authority to report the same to the state inspector of factories.

10. Hours of Labor. No person under the age of sixteen years shall be employed or suffered or permitted to work at any gainful occupation more than forty-eight hours in any one week, nor more than eight hours in any one day; or before the hours of seven o'clock in the morning or after the hour of seven o'clock in the

evening. Every employer shall post in a conspicuous place in every room where such minors are employed a printed notice stating the hours required of them each day of the week, the hours of commencing and stopping work and the hours when the time or times allowed for dinner or for other meals begins and ends. The printed form of such notice shall be furnished by the state inspector of factories, and the employment of any such minor for longer time in any day so stated shall be deemed a violation of this section.

11. Employments Forbidden Children under Sixteen Years of Age. *No child under the age of sixteen years shall* be employed at sewing belts, or to assist in sewing belts, in any capacity whatever; nor shall any child adjust any belt to any machinery; they shall not oil or assist in oiling, wiping or cleaning machinery; they *shall* not *operate or assist in operating* circular or band saws, wood-shapers, wood-jointers, planers, sandpaper or wood-polishing machinery, emery or polishing wheels used for polishing metal, wood-turning, or boring machinery, *stamping machines in sheet metal and tinware manufacturing*, stamping machines in washer and nut factories, operating corrugating rolls, such as are used in roofing factories, nor shall they be employed in operating any passenger or freight elevators, steam boiler, steam machinery, or other steam generating apparatus, or as pin boys in any bowling alleys; they shall not operate or assist in operating, dough brakes, or cracker machinery of any description; wire or iron straightening machinery; nor shall they operate or assist in operating rolling mill machinery, punches or sheers, washing, grinding or mixing mill or calender rolls in rubber manufacturing, nor shall they operate or assist in operating laundry machinery; nor shall children be

employed in any capacity in preparing any composition in which dangerous or poisonous acids are used, and they shall not be employed in any capacity in the manufacture of paints, colors or white lead; nor shall they be employed in any capacity whatever in operating or assisting to operate any passenger or freight elevator; nor shall they be employed in any capacity whatever in the manufacture of goods for immoral purposes, or any other employment that may be considered dangerous to their lives or limbs, or where their health may be injured or morals depraved; nor in any theater, concert hall, or place of amusement wherein intoxicating liquors are sold; nor shall females under sixteen years of age be employed in any capacity where such employment compels them to remain standing constantly.

12. Prima Facie Evidence of a Child's Employment. The presence of any person under the age of sixteen years in any manufacturing establishment, factory or workshop, shall constitute *prima facie* evidence of his or her employment therein.

13. Enforcement of the Provisions of this Act. It shall be the special duty of the state factory inspector to enforce the provisions of this act, and to prosecute all violations of the same before any magistrate or any court of competent jurisdiction in this state. It shall be the duty of the state factory inspector, assistant state factory inspector and deputy state factory inspectors under the supervision and direction of the state factory inspector, and they are hereby authorized and empowered to visit and inspect, at all reasonable times and as often as possible, all places covered by this act.

14. Penalty. Whoever, having under his control a child under the age of sixteen years, permits such child to be employed in violation

of the provisions of this act, shall for each offense be fined not less than $5 nor more than $25, and shall stand committed until such fine and costs are paid.

A failure to produce to the inspector of factories, his assistants or deputies, any age and school certificates, or lists required by this act, shall constitute a violation of this act, and the person so failing shall, upon conviction, be fined not less than $5 nor more than $50 for each offense. Every person authorized to sign the certificate prescribed by section 7 of this act, who certifies to any materially false statement therein shall be guilty of a violation of this act, and upon conviction be fined not less than $5 nor more than $100 for each offense, and shall stand committed until such fine and costs are paid.

Any person, firm or corporation, agent or manager, superintendent or foreman of any firm or corporation, whether for himself or for such firm or corporation, or by himself, or through subagents or foreman, superintendent or manager, who shall violate or fail to comply with any of the provisions of this act, or shall refuse admittance to premises or otherwise obstruct the factory inspector, assistant factory inspector or deputy factory inspector in the performance of their duties, as prescribed by this act, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than $5 nor more than $100 for each offense, and shall stand committed until such fine and costs are paid.

15. REPEAL. "An act to prevent child labor," approved June 17, 1891, in force July 1, 1891, and all other acts and parts of acts in conflict with this act are hereby repealed.

STATEMENT OF FACTS.

The plaintiff in error, Sturges & Burn Manufacturing Co., is a corporation engaged in manufacturing tinware and other metal products. On the 16th day of April, 1907 (printed record p. 108) the company, through its superintendent John Perry, and foreman Frederick William Herbert, employed the defendant in error herein, as press-hand to operate a punch press.

Mr. Herbert testified (printed record p. 75):

> "Q. Did you have any conversation with him (Beauchamp) about employing him? A. I asked him what he had been working at.
>
> Q. Did he apply for a job—I will ask you first if you had any conversation with him. A. He asked for a job.
>
> Q. Then what did you say? A. I asked him what he had been doing. He said he was a press hand. I said, 'How long have you been working on presses?' He said, 'About a year.' I said, 'Where have you been working?' and he said he had been working at Kellogg's and the Western Electric. I said, 'How old are you?' and he said he was a little over seventeen. * * * I said, 'What class of press do you work on,' and he said 'On all classes.' I said, 'Where was the last place you worked' and he said 'Kellogg's.' 'How long have you been working there?' He said 'About a month.' Then I took him downstairs and gave him over to the assistant and the assistant put him to work on presses."

And John Perry testified (printed record p. 85):

> "Q. Did you hear anything said by him as to what his age was? A. I heard Mr. Herbert ask him how old he was and he says, 'I am over seventeen.'"

And on cross examination (printed record p. 88) he said:

> "A. They would have to be over sixteen to be employed. We do not employ anybody under sixteen, not even in the office. * * *
>
> Q. What was it that Herbert said to Beauchamp about his age? A. He says, 'How old are you?'
>
> Q. What did Beauchamp say? A. He says, 'I am over seventeen.'"

He was employed on that day and went to work for the company. Ten days later, on April 26, 1907, he got his hand caught in a press and had three of the fingers of his right hand cut off (printed record pp. 35, 38).

On July 18, 1907, defendant in error Beauchamp, by Nepthali Beauchamp, his next friend, brought suit in the Superior Court of Cook county, Illinois, against the plaintiff in error, Sturges & Burn Manufacturing Co. A declaration was filed July 26, 1907, and an amended declaration August 14, 1907, to which demurrers were sustained.

On April 18, 1908, plaintiff filed a second amended declaration containing three counts, to the first and second counts of which demurrers were sustained. Two additional counts were subsequently filed and the case as tried upon the third count of the second amended declaration and the

first additional count, but after the evidence was closed and before the cause was submitted to the jury the plaintiff dismissed all counts except the third count of the second amended declaration filed April 18, 1908 (printed record, p. 108).

On motion of the plaintiff all evidence relative to the condition of the machine, either before or after the injury, was stricken out (printed record, 108, 109, 110) so that the case stands solely upon the one count. That count is based upon *section* 11 of the act above set forth, purporting to regulate the employment of children.

Plaintiff in that count (printed record, pp. 16, 17, 18) avers that on the 26th day of April, 1907, he was a minor under the age of sixteen years, and was directed by the defendant to go to work and operate a certain punch press in the defendant's factory used in stamping certain sheets of metal. He then sets out *in haec verba* section 11 of the statute aforesaid and then avers,

> "Further complaining the plaintiff charges that the said defendant *well knowing the premises* did then and there on, to wit, the date aforesaid, in *violation of said statute* direct the plaintiff herein to operate, manage and control said punch press and to stamp said sheets of tin upon said punch press and while so engaged at his work for the said defendant, plaintiff then and there, without fault on his part, and while in the exercise of all due care and caution for his own safety in operating said punch press *and by reason of the violation of the statute aforesaid by the defendant* had his right hand caught in said punch press" etc.

The defendant filed a plea of not guilty, and also, for the purpose of placing on record its contention regarding the law, pleas setting forth that the act in question violated section 13, article 4 and section 2, article 11 of the Constitution of the State of Illinois and section 1 of the 14th amendment to the Constitution of the United States.

At the close of the plaintiff's evidence the defendant moved the court to take the case from the jury and find the defendant not guilty (printed record, p. 68) and especially moved the court to instruct the jury to exclude all of the plaintiff's evidence under the third count of the second amended declaration (the count in question) on the ground of the unconstitutionality of the statute. These motions were overruled and were renewed by the defendant at the close of all the evidence (printed record, pp. 110 and 111) when they were again overruled by the court and exceptions taken. The plaintiff having dismissed all counts except the one in question and the court on plaintiff's motion having struck out all the evidence except such as appertained to the third count of said second amended declaration, the cause was submitted to the jury upon the issues joined upon that count alone. The only issue of fact submitted to the jury by the instructions was the question whether, at the time of the injury, the plaintiff *was* or *was not* under the age of sixteen years.

The court instructed the jury,

"That the questions of *contributory negligence* and *assumption of risk* by the plaintiff are not in-

volved in this case'' (Instruction No. 2, printed record, 112).

The court also instructed the jury that the mere fact, if it were a fact, ''that the defendant *did not know* that the plaintiff was under the age of sixteen years at the time of his alleged injury, is of itself no defense to this suit'' (Instruction No. 3, printed record, p. 112).

The court also instructed the jury, ''if you find from the evidence that plaintiff was in fact less than sixteen years old and that when injured he was employed upon a stamping machine by he defendant, then in such case the defendant is guilty of a violation of the statute and the plaintiff is entitled to recover'' (Instruction No. 4, printed record, p. 112).

The court also instructed the jury, ''if you further find from the evidence that the plaintiff was injured as a result of the defendant's violation of said statute, if it did violate it, then you must find the defendant guilty even though you may also believe from the evidence that the defendant did not know before and at the time that the plaintiff was injured, that he was under the age of sixteen years'' (Instruction No. 5, printed record, p. 112).

The court also instructed the jury, ''if you find from the evidence that the plaintiff was employed by the defendant in its factory, to work on a stamping machine, on April 26, 1907, and if you further find from the evidence that on April 26, 1907, the plaintiff was under the age of sixteen years and that while so employed by the defendant he was injured

in the manner and form as charged in the third count of his second amended declaration, then you will find the defendant guilty" (Instruction No. 6, printed record, pp. 112 and 113).

The trial judge held that "*a false representation made by the boy about his age would not be a defense,* it would not be competent as against this suit, because the person employing a minor is bound to know the age of the minor" (printed record, p. 109); that "the only question is whether he was put on that machine in their employment at an age under sixteen."

One of the errors assigned by the plaintiff in the Supreme Court of Illinois was that, "The court below erred in holding as a matter of law, and so ruling in the admission and rejection of evidence and in the giving and refusing of instructions, that plaintiff was entitled to recover if, as a matter of fact, at the time of the injury he was under the age of sixteen years, regardless of fraud and false statements made by him at the time of his employment, and for the purpose of obtaining such employment by deceiving the defendant as to his age."

And the Supreme Court of Illinois overruled that assignment and sustained the ruling of the trial court in their opinion, saying:

> "If the appellee did misrepresent his age at the time he was employed, we are of the opinion he was not estopped from maintaining this action by reason of such misrepresentation. The law is, that if the appellant employed the appellee in violation of the statute it is liable if

> he was injured while in such employment" (printed record, p. 128);

and referred to the case of the *American Car Co.* v. *Armentraut,* 214 Ill. 509, where the court had made a similar ruling with reference to a boy under *fourteen* years of age.

Plaintiff in error also contended in the Supreme Court of Illinois that inasmuch as the action is grounded *solely* on *a violation of the statute,* and that but for the statute there would be no cause of action and inasmuch as the statute by its terms gave no remedy to one employed in violation of the statute, that the action could not be maintained, but the court held otherwise, and quoting from its opinion in the *American Car Co.* v. *Armentraut,* 214 Ill. 509, said:

> "The statute was enacted for the protection of the health and safety of children, and a liability for damages resulting from its violation is created whether it is expressly so declared in the statute or not" printed record, p. 127).

In another part of the opinion and while discussing another question not in issue in this court the Supreme Court of Illinois said (printed record, p. 130):

> "The last clause of the title is, we think, broad enough to cover any reasonable regulation which would tend to insure the enforcement of the main object of the act which was to protect children from engaging in employments where their immaturity, inexperience and heedlessness might cause them to be injured, which object, we think, would be materially advanced by a provision imposing a personal liability upon an employer to a child, who should employ a child in violation of the statute."

As construed and interpreted by the Supreme Court of Illinois, section 11 of the act in question gives

(a) A right of action at the suit of an injured employee against his employer for violation of the statute.

(b) It excludes from consideration the ordinary defenses of assumed risk and contributory negligence.

(c) It excludes from consideration fraud, false statements and deceit of an injured employee by means of which he obtained employment and induced the violation of the statute by his employer, even though such employee has arrived at the *age of discretion* so as to be legally responsible for his *frauds* and *crimes*.

(d) That an employer who violates the statute is an *insurer* of the *safety* of his *employee* and liable to indemnify him for all damages or loss suffered by reason of personal injuries received during his employment, although such employment was obtained by lying and deceit regarding his age and would not otherwise have been obtained.

(e) That, to an action by an injured employee under sixteen years of age against his employer for *employing him in violation of the statute*, there is no defense.

It is respectfully submitted that the act in question so construed, violates the *fundamental rights* of the plaintiff in error as guaranteed by the Federal Constitution and is inimical to and in violation of

section 1 of the fourteenth amendment to that instrument, and that is the question submitted by this record, the jury having rendered a verdict for $4,500 upon which judgment was entered by the Superior Court of Cook County, Illinois, and affirmed by the Supreme Court of Illinois.

Errors Relied on.

The Supreme Court of Illinois erred in that it did not hold and decide said section 11 of said act to be void for the reason that

(1) Said act, section 11 thereof, as construed and interpreted by the Supreme Court of Illinois, did abridge the privileges and immunities of this defendant, as guaranteed by section 1 of the fourteenth amendment of the Federal Constitution.

(2) Said act, section 11 thereof, as construed and interpreted by the Supreme Court of Illinois, violated the provision guaranteeing due process of law, and

(3) Said act, section 11 thereof, as construed and interpreted by the Supreme Court of Illinois, violated the provision guaranteeing equal protection of the laws (printed record, p. 135).

BRIEF OF ARGUMENT.

I.

THE DEFENDANT IN ERROR BEAUCHAMP, AT THE TIME OF HIS EMPLOYMENT, WAS AN ADULT, NOT A CHILD, AND IN THE CONSIDERATION OF THE QUESTIONS RAISED BY THIS RECORD SHOULD BE SO TREATED.

BLACK'S LAW DICTIONARY defines "CHILD" as follows:

> "CHILD—This word has two meanings in law. (1) In the law of the domestic relations and as to descent and distribution it is used strictly as the correlative of 'parent,' and means a son or daughter considered as in relation with the father or mother.
>
> "(2) In the law of negligence, in laws for the protection of children, etc., it is used as the opposite of '*adults*' and means the young of the human species (generally under the age of puberty) without any reference to parentage, and without distinction of sex."

See, also, CENTURY DICTIONARY, where "CHILDHOOD" is defined as the time from birth to puberty.

The *age of discretion*, like the *time of puberty*, necessarily varies in different individuals, but from time immemorial, it has been recognized in the jurisprudence of England and this country, that the age of *fourteen* in *males* and *twelve* in *females* marks that dividing line.

Thus at common law *males* of the age of *fourteen* and *females* of the age of *twelve* could contract a valid marriage,

16 Am. & Eng. Ency. of Law, 2nd Ed., p. 263,

or make a valid will as to personalty,

16 Am. & Eng. Ency. of Law, 2nd Ed., p. 265.

The law presumes that every person over the age of *fourteen years* has common discretion and understanding, until the contrary is shown, and a witness *over that age* will not be examined respecting his capacity unless some reason creating suspicion is made to appear; but under the age of fourteen there is no presumption of competency.

16 Am. & Eng. Ency. of Law, 2nd Ed., p. 267.

The same line of cleavage runs all through the Illinois statutes. For example, "A person shall be considered of sound mind * * * who hath arrived at the age of *fourteen years*, or before that age, if such person know the distinction between good and evil."

Hurd's Illinois Statutes of 1912, Chap. 38, Par. 282, p. 818.

A widow is entitled to be appointed administratrix of her deceased husband's estate, even though she be but *fourteen years* of age.

Hurd's Illinois Statutes of 1912, Chap. 3, Section 18, p. 11, entitled "Administration."

One who has arrived at the age of *fourteen* may not be adopted without his consent.

Hurd's Illinois Statutes of 1912, Chap. 4, Sec. 4, p. 36.

A person *fourteen* years of age may be indicted and prosecuted for any felony or misdemeanor.

Hurd's Illinois Statutes of 1912, Chap. 38, Sec. 7, Pars. 279, 280, 281 and 282.

A person *fourteen* years of age may select his own guardian.

Hurd's Illinois Statutes of 1912, Chap. 64, Sec. 3, p. 1261.

These statutes are based upon an undisputed and undisputable fact, namely, the *age of discretion, of knowledge* and *understanding*. It is a physical condition and status that cannot be changed by the legislature or the court.

In *Bell* v. *State*, 18 Tex. App. 53; 51 Am. Reports, 293, in construing a statute providing that an assault by an *adult male* upon the person of a child should constitute an aggravated assault, it was held that a *child* was a boy not above *fourteen*, or a girl not above *twelve* years of age. The court said:

> "Resort then must be had to the common meaning and acceptation of the word 'child.' Mr. Webster defines it to mean 'a young person of either sex; hence one who exhibits the characteristics of a very young person,' and this is its common acceptation. It means a young person as counter-distinguished from one of age sufficient to be supposed to have settled habits and fixed discretion. Mr. Webster defines the word 'boy' to mean 'a male child from birth to

> the age of puberty,' and 'puberty' in civil law is 'the age in boys of fourteen, and in girls, of twelve years' (Bouv. Law Dict.). As the law now stands, we believe that the age of *fourteen* in boys and *twelve* years in girls limits the age of *childhood*."

In an act defining aggravated assault, "child" is not synonymous with "minor."

> *McGregor* v. *State*, 4 Tex. App. 599.
> *Allen* v. *State*, 7 Tex. App. 298.

See also *Quattlebaum* v. *Triplett*, 69 Ark. 91.

A *minor* in Illinois is a male *under twenty-one* years of age or a female under *eighteen* years.

> Hurd's Illinois Statutes of 1912, Chap. 64, Sec. 1, p. 1261.

Both by the common law and the law of Illinois, as exemplified by its statutes, the *age of discretion* in males is *fourteen* years. Persons under that age are presumed as a matter of law to be children. Persons of the *age of fourteen* and upwards are presumed as a matter of law not to be children but *sui juris* having arrived at the *age of discretion*. The two classes are entirely distinct and different principles and rules of law apply to them.

The legislature has no power to change the *age of discretion* any more than it has to change the period of gestation. It is a physical fact that is immutable and cannot be changed by law. In the consideration of the questions in this record it must be kept in mind that the defendant in error had arrived at the *age of discretion* and was of an age to be responsible for his *frauds* and *crimes*.

II.

THE MAXIM OF THE LAW, "NO ONE ACQUIRES A RIGHT OF ACTION FROM HIS OWN WRONG," APPLIES TO MINORS WHO HAVE REACHED THE AGE OF DISCRETION TO THE SAME EXTENT THAT IT DOES TO OTHER ADULTS.

22 Cyc. Title Infants, p. 512.

Ex Parte Unity Joint Stock Banking Association, 3 DeG. & J. 63 (44 Eng. Reprint, p. 1192).

Bigelow on Estoppel (5th Ed.), p. 606.

Wright v. *Snowe*, 2 DeG. & Sm. 321 (64 Eng. Reprint, p. 144).

Sanger v. *Hibbard et al.*, 53 S. W. 330.

Williamson v. *Jones*, 27 S. E. 418 (Va.).

Ferguson v. *Bobo*, 54 Miss. 121.

Pace v. *Cawood*, 110 S. W. 414 (Ky.).

57 Lawyer's Reports Annotated, p. 673, note.

Rice v. *Boyer*, 108 Ind. 472.

Commander v. *Brazil*, 41 Southern, 497 (Miss.).

16 Amer. & Eng. Ency. of Law, 2nd Ed., p. 311.

Whittington v. *Wright*, 9 Ga. 29.

Hall v. *Timmons*, 2 Rich. (S. C.) 120.

Barham v. *Turberille*, 1 Swan. 437.

Parker v. *Elder*, 11 Humph. 546.

Mathews et al. v. *Cowan et al.*, 59 Ill. 341.

Vasse v. *Smith*, 6 Cranch, 226.

Munden v. *Harris*, 134 S. W. 1076-1080.

In 22 Cyc., title, "Infants," page 512, it is said:

> "It has been laid down that as a general rule the doctrine of estoppel has no application to infants, but there are many cases recognizing an exception to this rule or denying its application in case the conduct of the infant on which the estoppel is sought to be based has been *intentional* and *fraudulent*, and the infant was at the time of *years of discretion*."

In this case the defendant in error was at the time of *years of discretion*. His conduct was *intentional* and *fraudulent*. This is clearly shown by similar frauds perpetrated on previous employers. More than a year prior to the time of his employment by the plaintiff in error, the defendant in error stated in his own handwriting in answer to the question, "How old are you?" "Years 16, months 10," and this for the purpose of obtaining employment at "The Fair" (printed record, p. 81). He knew that unless he was sixteen years of age he could not obtain employment of the plaintiff in error to operate a punch-press. The wages for operating a punch-press were higher than he had been receiving in other work (printed record, p. 49).

> "Infants are not privileged to practice deceptions or cheats on innocent persons."
>
> *Whittington* v. *Wright*, 9 Ga. 29, quoting from 9 Mod. 33.

In *Williamson* v. *Jones*, 27 S. E. 418, the Supreme Court of Virginia said:

> "Positive intentional fraud would bar an infant of *years of discretion*, but mere silence or quiescence surely will not. I think the weight of authority is that matters sufficient to raise an

estoppel, if unconnected with a contract, would bar an infant from asserting a right even to land. It must, however, be intentionally fraudulent. Mere silence or quiescence as in this case will not do so. (Bigelow Estoppel, 600, 2 Penn. Eq. Jur., Sec. 815.)"

In *Coleman* v. *Himmelberger Harrison Land & Lumber Co.*, 79 S. W. 981, the St. Louis Court of Appeals in a master and servant case, said:

"It is not correct to say that the law does not exact of one who is a minor that care and caution that it demands of an adult. A child of very tender years is not chargeable with *contributory negligence* under any circumstances. A child not of tender years (say seven or eight years of age), is bound to use such care as children of his age, capacity and intelligence are capable of exercising. (*Pekin* v. *McMahon*, 154 Ill. 141 * * *) The care a minor is bound to use is that care that persons of his age, capacity and intelligence are capable of using in like circumstances. (*People of New York* v. *Andrews* [N. Y.], 22 N. E. 358, 6 L. R. A. 128; *Consolidated Traction Co.* v. *Scott* [N. J. Law], 34 Atl. 1094, 33 L. R. A. 122, 55 Am. St. Rep. 620.) There is no arbitrary rule fixing the age when a youth may be declared wholly capable of understanding and avoiding danger. (*Barney* v. *Railway*, 126 Mo. 372, 28 S. W. 1069, 26 L. R. A. 847.) Yet it seems to us that a youth 18 years of age, of ordinary intelligence and experience, should show some incapacity, in addition to his minority, to warrant a court in instructing, as a matter of law, that he was not required to use the same care as an adult."

In *Ex Parte Unity Joint Stock Banking Association,* 3 DeG. & J. 63 (44 Eng. Reprint, p. 1192), it was held that:

> "Where an infant had obtained a loan on a representation, which he knew to be false, that he was of age; held, that a proof for the loan was properly admitted in bankruptcy."

The Lord Justice Knight Bruce, in delivering his opinion, said:

> "A young man, who from his appearance might well have been taken to be more than twenty-one years of age, engaged in trade, and wished to borrow or to obtain credit, and for the purpose of so doing represented himself to the petitioning creditor as of the age of twenty-one, expressly and distinctly so represented himself. We feel no difficulty or doubt on the question, whether the minor did at the time believe or not believe what he said, for it is impossible from the materials before us to infer that he did believe his statement to be true, or was ignorant of his own age when he obtained the money. The question is, whether in the view of a court of equity, according to the sense of decisions not now to be disputed, he has made himself liable to pay the debt, whatever his liability or nonliability at law. In my opinion we are compelled to say that he has."

In *Wright* v. *Snowe,* 2 DeG. & Sm. 321 (64 Eng. Reprint, p. 144) it was held, where a person represents to another that he is of age, and executes to him a release, upon which the latter acts: Held, that he could not afterwards impeach the validity of the release on the ground of his minority; and that it was immaterial whether he was aware or not of the incorrectness of the representation.

The vice-chancellor said:

> "It is too late to deny that an infant may commit a fraud to the prejudice of his civil rights; but what amounts to such a fraud is often a delicate question."

In *Sanger* v. *Hibbard et al.*, 53 S. W. 330, the Court of Appeals of Indian Territory held:

> "Where, in an action for debt, a writ of attachment is levied on goods of a minor, among which are goods purchased from plaintiff, and after sale of the goods, and before judgment against him, said minor gives a dissolving bond, obtains possession of the proceeds, and disposes of them, he cannot afterwards set up his infancy as a defense to the action."

TOWNSEND, J., in delivering the opinion of the court, said:

> "Now, can an infant use the process of the court to get possession of the *rem*, dispose of it, and then come in and disaffirm the original contract, and thus escape with the proceeds, which he could not do if he had filed his disaffirmance when the attachment was levied? We know of no authority going to that extent. We do not think he can use the process of the court to make for himself a defense which he did not have when the suit was instituted."

The case of *Edgar et al.* v. *Gertison*, 112 S. W. 831, was a suit to cancel a deed, on the ground that the grantor was an infant when she executed it. It appearing from the evidence that the land had been conveyed for a reasonable price, without coercion or persuasion, and the minor and her parents having sworn at the time that she was of age, it was held by the Court of Appeals of Kentucky, that she was estopped.

The court said:

> "Appellant's counsel contend that the principle of estoppel does not apply to infants, and presents a list of authorities from other jurisdictions which tend to support his contention; but this court has established a different rule, and determined that infants are estopped when the facts are such as appear in this case."

The same rule was announced in *Pace* v. *Cawood*, 110 S. W. 414, by the same court.

The court said:

> "The evidence is not sufficient to justify us in saying that the purchaser knew that Pace was not of age; and, having obtained the purchase price upon the faith and credit of his verified statement that he was 21 years of age, he will not be permitted to controvert it to the prejudice of the person dealing with him. (*Harris* v. *Ronk*, 107 S. W. 341, 32 Ky. Law. Rep. 967; *Schmitheimer* v. *Eiseman*, 7 Bush. 298; *Ingram* v. *Ison*, 80 S. W. 787, 26 Ky. Law Rep. 48."

In 57 Lawyers' Reports, Annotated, at page 673, there is an exhaustive note on the question of the liability of an infant for his *torts*, including his *frauds*, in inducing a contract by false and fraudulent representations. A great many authorities are reviewed. The author cites the case of *Johnson* v. *Pye*, 1 Keble, 913, and 1 Lev. 169, as the leading English case which has been followed in England, where the rule is announced that an infant is not liable in tort for deceit in representing himself to be of age, or making other false statements, with the intention thereby to induce, and actually inducing, another person to contract with him. This is the rule at law; but it is not the rule in equity. After reviewing the

English cases and showing that they still follow *Johnson* v. *Pye*, the author continues:

> "In the meantime, in this country there was a successful attempt to break away from a doctrine which, as suggested in 8 Yale L. J., p. 237, by making an infant, on the ground that he is not liable for his contracts, irresponsible for a fraud by which he has induced another to contract with him, violates that fundamental principle of contracts which renders void any agreement procured by fraud."

The author then reviews a great number of American cases, the result of which is to show that there is an irreconcilable conflict in the authorities; but that the weight of authority is to the effect that an infant is not liable on his contract although induced by fraud; but that he is liable for the fraud perpetrated, although there is a respectable list of authorities holding that where an infant has induced the making of a contract by fraud and misrepresentation, regarding his age, he is estopped and the contract is binding upon him.

In *Rice* v. *Boyer*, 108 Ind. 472, the Supreme Court held that an action will lie against an infant, who has obtained property on the faith of a false and fraudulent representation that he is of full age, for the loss actually sustained by a party who dealt with him in good faith and in the exercise of reasonable diligence, where a recovery can be had without giving effect to the contract.

Elliott, Chief Justice, after a review of the authorities, said:

> "Our judgment, however, is that where the infant does fraudulently and falsely represent

that he is of full age, he is liable in an action *ex delicto* for the injury resulting from his tort. This result does not involve a violation of the principle that an infant is not liable where the consequence would be an indirect enforcement of his contract, for the recovery is not upon the contract, as that is treated as of no effect; nor is he made to pay the contract price of the article purchased by him, as he is only held to answer for the actual loss caused by his fraud. In holding him responsible for the consequences of his wrong, an equitable conclusion is reached and one which strictly harmonizes with the general doctrine that an infant is liable for his torts. Nor does our conclusion invalidate the doctrine that an infant has no power to deny his disability, for it concedes this, but affirms that he must answer for his positive fraud. * * *

"We are unwilling to sanction any rule which will enable an infant who has obtained the property of another, by falsely and fraudulently representing himself to be of full age, to enjoy the fruits of his fraud, either by keeping the property himself or selling it to another, and when asked to pay its just and reasonable value successfully plead his infancy. Such a rule would make the defense of infancy both a shield and a sword, and this is a result which the principles of justice forbid, for they require that it should be merely a shield of defense."

In the case at bar, the defendant in error obtained his employment by *falsely* and *fraudulently* representing himself to be seventeen years of age. Having succeeded in deceiving his employer into hiring him and having suffered an injury, either by pure accident or through his own negligence, he now seeks to be indemnified therefor, because he successfully in-

duced the plaintiff in error, by his *fraud* and *deceit*, to violate a statute of the state.

In *Vinson* v. *State*, 52 S. E. 79, the Supreme Court of Georgia held that a minor who has arrived at the age of criminal responsibility may be convicted under the Act of 1903 of the fraudulent practices made penal by that act, although a contract of service made by him may not be civilly enforceable.

The act in question made criminal the obtaining of money or other articles of value, on a contract to perform services, which were not performed, and it was contended that, as the minor could not make a valid contract, he could not be liable under this statute.

The court said:

> "It was made a ground of the motion for a new trial that the accused should not have been convicted, because he was a minor, and could not lawfully contract, and that any contract made by him to perform services was voidable. If the Act of 1903 declared it to be a criminal offense to violate a contract, not only would the position above stated be sound, but the act would be unconstitutional. The offense created by that act is not merely a breach of contract, but the fraudulent procurement of money, or other thing of value, on a contract to perform services. The gist of the offense is such fraudulent procurement. The contract of a minor is voidable; but, unless he is under the age at which he is declared by statute to be capable of committing a crime, he is subject to prosecution and conviction. *A minor who has arrived at the age of criminal responsibility is as capable of committing a fraud as one of full age.* If a voidable contract was used as a means of perpetrating a fraud and

committing a criminal offense, the person making the contract would be none the less criminally responsible. The right to enforce a contract civilly, and the power to punish a minor who violates a criminal law, are two distinct things. The act makes no exceptions as to minors."

It will be noted that the case at bar is not one where the contract of employment is sought to be enforced by either party. Whether a minor is estopped from repudiating his contract on account of his *fraud* and *deceit* in inducing the other party to enter into the contract, is not the question here. The authorities upon that question are not harmonious. We cite cases of that character simply to show that the rule of estoppel for a minor's *fraud and deceit* applies. Where a minor knows of his title to property and permits another to purchase it without stating his title, he will be barred by the fraud from recovering the property from the purchaser.

Hall v. *Timmons*, 2 Rich. (S. C.) 120.
Barham v. *Turbeville*, 1 Swan. 437.

And this rule applies at law as well as in equity, and to infants having knowledge and discretion as well as to adults.

Barham v. *Turbeville*, *supra*.

In *Mathews et al.* v. *Cowan et al.*, 59 Ill. 341, the Supreme Court of Illinois held a minor liable who made a purchase of flour and obtained the delivery by fraud. In that case the minor obtained possession by giving a check where he had no funds.

In *Vasse* v. *Smith*, 6 Cranch, 226, this court held an infant liable in trover although the goods were

delivered to him under a contract. CHIEF JUSTICE MARSHALL said:

> "This court is of the opinion that infancy is no complete bar to an action of trover, although the goods converted be in his possession, in virtue of a previous contract. The conversion is still in its nature a tort; it is not an act of omission but of commission, and is within that class of offences for which infancy cannot afford protection."

The same rule was held to apply by the Missouri Court of Appeals in *Munden* v. *Harris*, 134 S. W. 1076-1080 in actions of libel and slander. The court said:

> "An infant is not liable to an action of slander 'until he is *doli capax*—capable of mischief—which, presumptively is not until he is 14 *years* of age.' Tyler on Infancy, section 127; Newell on Slander & Libel, 370; Odgers, Libel & Slander (star page) 353. The rule at common law, in force in this state (*State* v. *Tice*, 90 Mo. 112, 2 S. W. 269) is that a child under seven years of age is *doli incapax*—incapable of committing a crime—and between that age and 14 he may or may not be; *over 14 he is as an adult.*"

This case does not come within that class of cases which holds that an infant is not liable for his torts where the consequences would be an indirect enforcement of his contract. No contract is in question here. The suit is grounded upon a violation of the statute, not of any contract. That violation was induced solely by the *fraud* and *deceit* of Beauchamp. Hence the issue.

If an infant who has arrived at *years of discretion* may be held liable for his *crimes*, if he may be held

liable for his *torts*, if he may be estopped from setting up infancy as a defense when sued upon a contract for the purchase of property without returning the property, if he may be held liable for his *wilful* and *intentional frauds*, is there any known legal principle why he should not be held estopped from taking advantage of his own *wilful* and *intentional fraud* and *deceit* because the action is based upon the violation of a statute, which violation was induced by *fraud* and *deceit?* The ruling to the contrary in this case strikes at common honesty and violates fundamental constitutional guarantees.

III.

AT COMMON LAW THE RULE PROHIBITING ONE GUILTY OF CONTRIBUTORY NEGLIGENCE RECOVERING IN A SUIT FOR PERSONAL INJURIES FOR NEGLIGENCE APPLIES TO MINORS.

7 Am. & Eng. Ency. of Law, 2nd Ed. p. 409.
Heiman v. *Kinare, administrator,* 190 Ill. 156.

IT IS NOT ABOLISHED BY CHILD LABOR STATUTES.

The great weight of authority is to the effect that child labor statutes like the one in question do not take away the common law defense of *contributory negligence*, even where the prohibition is to employment of children under *fourteen* years of age. In a case like this where the plaintiff is much older and is presumed by law, in the absence of evidence to the contrary, to have reached the *age of dis-*

cretion, there can be no legitimate reason for a court in the absence of legislative authority abolishing the common law rule of contributory negligence.

The following cases from state courts hold that such statutes do not abolish the rule of contributory negligence:

Berdos v. *Tremont & Suffolk Mills*, 209 Mass. 489-498.

Smith v. *National Coal & Iron Co.*, 135 Ky. 671.

Darsam v. *Kohlmann*, 123 La. 164, 171, 172.

Queen v. *Dayton Coal & Iron Co.*, 95 Tenn. 458, 465.

Iron & Wire Co. v. *Green*, 108 Tenn. 161, 165.

Sterling v. *Union Carbide Co.*, 142 Mich. 284.

Braasch v. *Michigan Stove Co.*, 118 N. W. 366 (Mich.).

Syneszewski v. *Schmidt*, 153 Mich. 438.

Beghold v. *Auto Body Co.*, 149 Mich. 14.

Rolin v. *Tobacco Co.*, 141 N. C. 300.

Gaines Leathers v. *Blackwell Durham Tobacco Co.*, 144 N. C. 330.

Norman v. *Virginia-Pocahontas Coal Co.*, 68 W. Va. 405.

Burke v. *Big Sandy Coal & Coke Co.*, 68 W. Va. 421.

Sharon v. *Winnebago Furniture Manuf. Co.*, 141 Wis. 185, 189.

Dalm v. *Bryant Paper Co.*, 157 Mich. 550.

Roberts v. *Taylor*, 31 Ont. 10.

Nickey v. *Steuder*, 164 Ind. 189, 196.
Jacobson v. *Merrill & Ring Mill Co.*, 107 Minn. 74.
Perry v. *Tozer*, 90 Minn. 431.
Bromberg v. *Evans Laundry Co.*, 134 Iowa, 38, 46.
Evans v. *American Iron & Tube Co.*, 42 Fed. Rep. 519, 522.
Peters v. *Gille Mfg. Co.*, 133 Mo. App. 412, 419.
Nairn v. *National Biscuit Co.*, 120 Mo. App. 144, 147.
Kirkham v. *Wheeler-Osgood Co.*, 39 Wash. 415.

There is a broad distinction between *contributory negligence* and *assumption of risk*. The doctrine of *assumed risk* is based upon the contract of employment; that of *contributory negligence* is based upon the action or nonaction of the party in disregard of personal safety.

Berdos v. *Tremont & Suffolk Mills*, 209 Mass. 489-497.
Narramore v. *Cleveland, C. C. & St. L. Ry. Co.*, 96 Fed. 298-304.
Cleveland, C., C. & St. L. Ry. Co. v. *Baker*, 33 C. C. A. 458, 91 Fed. 224.

In *Union Pacific Railway Co.* v. *O'Brien*, 161 U. S. 451, the court recognized the distinction when it said:

> "The second instruction was properly refused, because it confused two distinct propositions—that relating to the risks assumed by an

employee in entering a given service and that relating to the amount of vigilance that should be exercised under given circumstances."

The due consideration of the authorities above cited and of the basis upon which the common law rule of *contributory negligence* rests, leads irresistibly to the conclusion that there is no logical nor legitimate basis for holding the common law rule of *contributory negligence* abolished by a statute prohibiting the employment of minors under a certain age where the statute contains no such provision.

IV.

THE STATUTE IN QUESTION IS A PENAL STATUTE, ALSO ONE IN DEROGATION OF THE COMMON LAW, AND AS SUCH MUST BE STRICTLY CONSTRUED. THE STATUTE IS PENAL AND BY ITS TERMS CONTAINS NO REMEDIAL FEATURES. ITS TITLE IS: "AN ACT TO REGULATE THE EMPLOYMENT OF CHILDREN IN THE STATE OF ILLINOIS AND TO PROVIDE FOR THE ENFORCEMENT THEREOF."

It *prohibits* employment of children under fourteen years of age and it *regulates* the employment of those between fourteen and sixteen years of age, and *prohibits* the employment of those under sixteen years of age in certain hazardous employments specified in section 11.

By section 13 it is made the special duty of the state factory inspector to enforce the provisions of the act and prosecute all violations of the same. Section 14 imposes a penalty upon whoever has under his control a child under sixteen years of age and permits such child to be employed in violation of the

provisions of the Act, also provides a penalty against any person, firm or corporation, agent or manager, superintendent or foreman, who shall violate or fail to comply with any of the provisions of the Act, making him guilty of a misdemeanor, and upon conviction, subject to a fine of not less than five nor more than one hundred dollars for each offense, and to stand committed until the fine and costs are paid.

The Act is silent as to any *civil* remedy. There is nothing in the Act purporting to abolish any of the *common law defenses*. It is a plain, simple, unambiguous, penal statute, prohibiting the employment of minors under the age of sixteen years in the prohibited occupations.

In *Huntington* v. *Attrill*, 146 U. S. 657, Mr. Justice Gray, in delivering the opinion of the court, said:

> "Penal laws, strictly and properly, are those imposing punishment for an offense committed against the state, and which, by the English and American constitutions, the executive of the state has the power to pardon. Statutes giving a private action against the wrongdoer are sometimes spoken of as penal in their nature, but in such cases it has been pointed out that neither the liability imposed nor the remedy given is strictly penal."

The Act in question does not by its terms give a private action against the wrongdoer. It provides for its enforcement through the state officers. The private action in the case at bar is not given by the Act; neither is it an action that could be maintained at common law. It is *created* by the court because the court thought such a liability would materially advance the object of the statute.

The Supreme Court of Illinois in its opinion said, that the object of the Act "was to protect children from engaging in employments where their immaturity, inexperience and heedlessness might cause them to be injured, *which object*, we think, *would be materially advanced* by a provision imposing a personal liability upon an employer to a child, who should employ a child in violation of the statute" (printed record, 130-1). And so *the court imposed a liability.* The basis of the ruling is not the terms of the Act itself, or anything therein, but the furtherance of the *object* the court conceives the legislature had in passing the Act.

In the *Huntington* v. *Attrill* case, *supra*, Mr. Justice Gray said:

> "The test whether a law is penal, in the strict and primary sense, is whether the wrong sought to be redressed is a wrong to the public, or a wrong to the individual. According to the familiar classification of Blackstone: 'Wrongs are divisible into two sorts or species: *private wrongs* and *public wrongs*. The former are an infringement or privation of the private or civil rights belonging to individuals, considered as individuals; and are thereupon frequently termed *civil injuries;* the latter are a breach and violation of public rights and duties, which affect the whole community, considered as a community, and are distinguished by the harsher appellation of *crimes* and *misdemeanors*.' (3 Bl. Com. 2.)"

When plaintiff in error employed the defendant in error on his statement that he was *seventeen years* of age, if it committed a wrong it was a wrong against the state, a *public wrong prohibited* by the

statute, and its penalties enforceable by the state only. It committed *no wrong* against the *defendant in error*. The act of the plaintiff in error in employing defendant in error was a lawful act at common law. The statute did not change the nature of that act as between the parties. By his employment the plaintiff in error did no wrong to the defendant in error as an individual.

The Supreme Court of Illinois, in the case of *American Car Co.* v. *Armentraut*, 214 Ill. 509, where it first construed this statute, said:

> "The act of the child in accepting or entering into the employment is not unlawful."

If the defendant in error had the lawful right to accept and enter into the employment of the plaintiff in error, then the plaintiff in error infringed no civil right of the defendant in error in employing him. It violated *no duty* that it *owed* to the *defendant in error*. The *defendant in error* cannot maintain an action based on the *violation* of the plaintiff in error's *duty* to the *state*.

The Supreme Court of Illinois, in *Illinois Central Railroad Co.* v. *O'Connor*, 189 Ill. 564, said:

> "It is a general rule that in order to maintain an action for injury to person or property, by reason of negligence or want of due care, there must be shown to exist some obligation or duty towards the plaintiff which the defendant has left undischarged or unfulfilled."

No such *duty* is *alleged* or *proved* in this case. The allegation of the declaration is "that the said defendant, *well knowing the premises* (viz.: that

plaintiff was then and there a *minor under* the age of *sixteen* years) did then there on, to-wit: the date aforesaid, in violation of said statute, direct the plaintiff therein to operate, manage and control said punch-press, etc." It will thus be seen that the action rests *solely* upon the alleged *wilful violation of the statute*. It is not an action based, or purporting to be based, upon *negligence*—the *violation* of a *duty* to the *defendant in error*—but upon the *violation* of a *penal statute* which creates no right in, nor gives any remedy to the defendant in error by its terms.

Prior to this statute it was perfectly lawful for a manufacturer like the plaintiff in error to employ a young man who had arrived at the age of discretion to work in its factory. *At common law* the *employment* was *lawful*. At *common law no action* existed in favor of the employee and against the employer *for the injury in question*. That injury was *not* the *result* of *negligence* on the part of the employer. It was the *result* of either *pure accident* or the *negligence of the employee* himself.

It cannot be contended that there is any warrant in the statute itself to support this cause of action, but the basis of the action is an alleged rule of law that, *the violation of a statute gives a right of action to one injured by its violation*.

The Supreme Court of Illinois in its opinion (printed record, 127), quoting from its opinion in *Strafford* v. *Republic Iron Co.*, 238 Ill. 371, said:

> "The fact that the statute under consideration does not in express terms provide a liability in damages for its violation, as is done by certain statutes relating to mines and miners,

> can make no difference under the construction given the statute in *American Car Co.* v. *Armentraut*, 214 Ill. 509. The statute was enacted for the protection of the health and safety of children, and a liability for damages resulting from its violation is created whether it is expressly so declared in the statute or not."

WE SUBMIT THERE IS NO SUCH RULE OF LAW. A *new* right cannot be created by *implication* or *inference*. This statute is held by the court to have created a *new right*, one that did not exist at common law, a right in derogation of the common law. The court has failed to distinguish between this statute and that class of regulating statutes whose *violation* is *held* to be evidence of negligence, such statutes and ordinances as regulate the speed of railway trains, automobiles, vehicles; statutes providing for the covering of dangerous machinery; statutes regarding insulating of electric wires; statutes providing for fire escapes, and many other regulating statutes, the violation of which is held by the courts to be evidence of *negligence*, i. e., of the *violation of some common law duty* which the defendant owed to the plaintiff.

In those cases, a suit having been brought, grounded on *negligence*, i. e., upon the *violation of a common law duty* which the defendant owed the plaintiff, the statute is offered together with proof of its violation, as evidence of such negligence. This case does not come within that class. The *plaintiff in error*, in employing the defendant in error, *violated no common law duty*. Whatever duty the employer owed was imposed by statute. That statute

imposed a *duty to the state*. It imposed none to the defendant in error.

In *Field* v. *United States*, 137 Fed. 6, the Circuit Court of Appeals for the Eighth Circuit, said:

> "A penal statute which creates and denounces a new offense must be strictly construed. A man ought not to be punished unless he falls plainly within the class of persons specified by such a statute. An act which is not clearly an offense by the express will of the legislative department of the government must not be made so after its commission by a broad construction adopted by the judiciary. The definition of the offense and the classification of the offenders are legislative and not judicial functions, and where, as in the case at bar, a penal statute is plain and unambiguous in its terms, the courts may not lawfully extend it, by construction, to a class of persons who are excluded from its effect by its terms, because, in their opinion, the acts of the latter are as mischievous as those of the class whose deeds the statute denounces."

In *United States* v. *Wiltberger*, 5 Wheaton, 96, Mr. Chief Justice Marshall, at page 96, said:

> "The intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in the words, there is no room for construction. The case must be a strong one, indeed, which would justify a court in departing from the plain meaning of words, especially in a penal act, in search of an intention which the words themselves did not suggest. To determine that a case is within the intention of a statute, its language must authorize us to say so. It would be dangerous, indeed, to carry the principle, that a case which is within the reason or mischief of a statute, is within its provisions, so far as to punish a

> crime not enumerated in the statute, because it is of equal atrocity, or of kindred character, with those which are enumerated."

This language was quoted by Mr. Justice Lurton in *The Ben R.*, 134 Fed. 784, in delivering the opinion of the Circuit Court of Appeals for the Sixth Circuit. See also *Sarlls* v. *United States*, 152 U. S. 570-575, and *United States* v. *Harris*, 177 U. S. 305-310.

Mr. Chief Justice Grant in rendering the opinion of the Supreme Court of Michigan, deciding in *Bandfield* v. *Bandfield*, 75 N. W. 287, that a statute will not be extended by implication to abrogate the established rules of common law, said:

> "No such right is conferred by our statute unless it be by implication. The legislature should speak in no uncertain manner when it seeks to abrogate the plain and long-established rules of the common law. Courts should not be left to construction to sustain such bold innovations. The rule is thus stated in 9 Bac. Abr. tit. 'Statutes,' I, p. 245: 'In all doubtful matters, and when the expression is in general terms, statutes are to receive such a construction as may be agreeable to the rules of the common law in cases of that nature; for statutes are not presumed to make any alteration of the common law, further or otherwise than the act expressly declares. Therefore in all general matters the law presumes the act did not intend to make any alteration; for, if the parliament had that design, they should have expressed it in the act.'"

The ruling of the Supreme Court of Illinois that the statute in question gave a *right of action* for its violation to the defendant in error and deprived the

plaintiff in error of its common law defenses of *contributory negligence* and *estoppel by fraud* and *deceit* in inducing the plaintiff in error to violate the statute, is not the result of *construction* or *interpretation* of the act itself. There is no language in the act which, by the strongest stretch of imagination, could be held to so authorize, nor does the court assume to base its judgment upon the language of the act, but, as we have above shown, upon its own judgment that such a liability imposed on the employer would *tend* to further what the court thought was the *object* and *purpose* of the legislature in passing the law. The result, as applied to the plaintiff in error, is a violation of fundamental maxims. Such an abuse of judicial power is, we submit, not *due process*.

V.

CORPORATIONS ARE PERSONS WITHIN THE FOURTEENTH AMENDMENT AND ARE ENTITLED TO ALL OF ITS PROTECTIONS.

Gulf, Colorado & Santa Fe Railway v. *Ellis*, 165 U. S. 154.

Santa Clara County v. *Southern Pacific Railway*, 118 U. S. 394.

Minneapolis Railroad Co. v. *Beckwith*, 129 U. S. 29.

Lowe v. *Kansas*, 163 U. S. 88.

Duncan v. *Missouri*, 152 U. S. 377.

Hayes v. *Missouri*, 120 U. S. 68.

VI.

THE STATUTE, AS HELD AND ENFORCED BY THE ILLINOIS SUPREME COURT IN THIS CASE, IS NOT WITHIN THE POLICE POWER OF THE STATE AND DENIES TO PLAINTIFF IN ERROR THE GUARANTIES OF THE FOURTEENTH AMENDMENT.

(a) The prohibition of the statute, so far as it applies to this case, is "no child under the age of sixteen years shall * * * operate or assist in operating * * * stamping machines in sheet metal and tinware manufacturing * * *"

Section 13 makes it the duty of the state factory inspector to enforce the provisions of the act and "prosecute all violations of the same," and section 14 fixes the penalties for its violation. By its terms it is a plain, simple, unambiguous, penal statute. It provides for no *civil remedy* to anyone for its violation. It does not pretend to deprive any defendant of any *common law* defenses.

As *held and enforced* by the Supreme Court of Illinois in this case, however, the statute becomes a quite different law. That court held that the statute gave to Beauchamp a *civil remedy* for its violation. The court, quoting from its decision in *Strafford* v. *Republic Iron Co.*, 238 Ill. 371, said (printed record, 127):

> "The fact that the statute under consideration does not in express terms provide a liability in damages for its violation, as is done by certain statutes relating to mines and miners, can make no difference under the construction given the statute in *American Car Co.* v. *Armen-*

> *traut*, 214 Ill. 509. The statute was enacted for the protection of the health and safety of children, and a liability for damages resulting from its violation is created whether it is expressly so declared in the statute or not."

In Illinois the *common law* is in force. A statute of that state provides "that the common law of England, so far as the same is applicable and of a general nature, and all statutes or acts of the British Parliament made in aid of and to supply the defects of the common law, prior to the fourth year of James I., except, etc. * * * shall be the *rule of decision* and shall be considered as of full force until repealed by *legislative authority*." (Section 1, chapter 28, Hurd's Illinois Statutes of 1909.)

One of the *rules of decision of* the common law is that any person suing for a personal injury, charging negligence, cannot recover if himself guilty of negligence contributing thereto, that is, the rule known as the "*contributory negligence*" rule.

Another rule of decision of the common law is that "no one can maintain an action based on his own wrong." In other words, no suitor may take advantage of his own wrong for the purpose of benefiting thereby.

It is also one of the rules of decision of the common law that a master may not be held liable for an injury to his servant while in his employ unless the same resulted from the *negligence* of the master, that is, from a *violation of some duty* the master owed the servant. These rules are all held by the

Supreme Court of Illinois to be abrogated or not applicable in the case at bar.

The court in its opinion says:

> "The law is that if the appellant employed the appellee in violation of the statute, it is liable if he was injured while in such employment" (printed record, 130).

And whether the defendant violated the statute depended upon one fact and one only, namely, whether or not the employee was sixteen years of age.

By the fourth instruction the jury were told that "if you find from the evidence that plaintiff was in fact *less than sixteen years old* and that when injured he was employed upon a stamping machine by the defendant, then in such case the defendant is guilty of a violation of the statute and the plaintiff is entitled to recover," and by the fifth instruction the court instructed the jury that if the defendant violated the statute "then you must find the defendant guilty even though you may also *believe* from the evidence that the *defendant did not know* before and at the time the plaintiff was injured that he was under the age of sixteen years." (Printed record, 112. There is an error in the printed record, the words "the defendant guilty even though you may also believe" being left out of instruction 5 after the word "find.")

Reduced down to a sentence, the ruling of the Supreme Court of Illinois is, that to a suit by an employee against an employer for violation of this statute, there is *no* defense; that it is not material

that the defendant was *deceived* and *defrauded* into employing the plaintiff in violation of the statute, or that the person guilty of the *fraud* and *deceit* was the plaintiff himself.

The action which was brought in this case must be either, *first*, for *wilful* violation of the statute, or, *second*, for a violation of the statute through *negligence*. The action brought was, as a matter of fact, one for *wilful* violation of the statute. It is averred in the declaration "that the said defendant, *well knowing the premises*, did then and there on, to-wit, the date aforesaid, *in violation of said statute*, direct the plaintiff herein to operate, manage and control said punch-press, etc." That is, that the defendant directed the plaintiff, in *direct violation of the statute*, to operate this punch-press, *well knowing the premises*, that is, *well knowing* that the plaintiff was *under* the *age* of *sixteen* years.

For the purpose of discussing the questions presented to this court, however, it makes little difference whether the action be treated as one for *wilful* violation of the statute or one for *negligent* violation of the statute. In neither case was there any right of action at common law. In neither case would the common law defenses be abrogated. It is only by the decision and judgment of the Supreme Court of Illinois, based on this statute, that the *cause of action* and the *absence of defenses* in this case exists.

It gives a right of action to the *fraudulent* employee. It mulcts in damages the deceived employer. And why? Because the court assumed that the

"*object* of the act was to protect children from engaging in employments where their immaturity, inexperience and heedlessness might cause them to be injured, which object we think would be materially advanced by a provision imposing a personal liability upon an employer who should employ a child in violation of the statute" (printed record, 130), and that the *object* came within the *police powers* of the state.

(b) *We submit that the statute as held and enforced by the Illinois Supreme Court in this case is not within the police power of the state, and is a violation of the rights guaranteed to plaintiff in error by the fourteenth amendment.*

Cooley in his work on Constitutional Limitations, 3rd *edition, star page 112*, in discussing the maxim of the law that "no one ought to be a judge in his own cause," said:

> "We do not see how the legislature can have any power to abolish a maxim which is among the fundamentals of judicial authority."

The maxim referred to by Judge Cooley is no more fundamental than the one set aside in the case at bar. The *police power* is limited to enactments which have reference to the public *health* or *comfort, safety* or *welfare of society.*

The legislature has no power, under the guise of police regulations, to arbitrarily invade the personal rights and personal liberty of the individual citizen and the courts have the right to determine whether such act *relates* to the objects which the ex-

ercise of the police power is designed to secure and whether it is *appropriate* for the promotion of such objects.

Minnesota v. *Barber*, 136 U. S. 313-320.
Mugler v. *Kansas*, 123 U. S. 623-661.
Yick Wo v. *Hopkins*, 118 U. S. 356-370.
Collins v. *New Hampshire*, 171 U. S. 30.
Ruhstrat v. *The People*, 185 Ill. 133.
City of Chicago v. *Gunning System*, 213 Ill. 628.
In the matter of the Application of Peter Jacobs, 98 N. Y. 98.
State v. *Caspare et al.*, 80 Atl. 606-613 (Md.).
Lawton v. *Steele*, 152 U. S. 133-136.

In the last case cited, this court, speaking through Mr. Justice Brown, said (page 136):

> "The extent and limits of what is known as the police power have been a fruitful subject of discussion in the appellate courts of nearly every state in the Union. It is universally conceded to include everything essential to the public *safety*, *health*, and *morals*, and to justify the destruction or abatement, by summary proceedings of whatever may be regarded as a public nuisance. * * *
>
> "To justify the state in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with

private business, or impose unusual and unnecessary restrictions upon lawful occupations."

In *Minnesota* v. *Barber*, 136 U. S. 313-320, this court, citing from *Mugler* v. *Kansas*, 123 U. S. 623, 661, said:

> "If, therefore, a statute purporting to have been enacted to protect the *public health*, the *public morals* or the *public safety*, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution."

In *Collins* v. *New Hampshire*, 171 U. S., page 30, this court, speaking through Mr. Justice Peckham, said:

> "The direct and necessary *result* of a statute must be taken into consideration when deciding as to its validity, even if that result is not in so many words either enacted or distinctly provided for. In whatever language a statute may be framed, its purpose must be determined by its *natural and reasonable effect*. (*Henderson* v. *Mayor of New York*, 92 U. S. 259; *Morgan's Steamship Co.* v. *Louisiana*, 118 U. S. 455, at 462.) Although under the wording of this statute the importer is permitted to sell oleomargarine freely and to any extent, providing he colors it pink, yet the permission to sell, when accompanied by the imposition of a condition which, if compiled with, will effectually prevent any sale, amounts in law to a prohibition."

In *Yick Wo* v. *Hopkins*, 118 U. S. 356-369, Mr. Justice Matthews in rendering the opinion of the

court, after quoting the provisions of the fourteenth amendment, said:

> "These provisions are universal in their application to *all* persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the *equal protection of the laws* is a pledge of the protection of *equal laws*. It is accordingly enacted by section 1977 of the Revised Statutes that 'all persons within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefits of all laws and proceedings for the security of persons and property as is enjoyed by white citizens and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.'"

In considering the effect of this statute, we are not concerned with the general features of the statute prohibiting the employment of children under fourteen years of age and regulating the employment of children between the ages of fourteen and sixteen years. We are concerned here only with *section* 11, *as construed and applied to this case*. It is said by the Supreme Court of Illinois in its opinion that "the validity of such statutes has been sustained as an exercise of the police power of the state upon the ground that the state is interested in the protection of children, and to that end may pass laws preventing their employment at a tender age, when they should be in school, in occupations that expose them to danger of being crippled and maimed for life, and thereby rendered less capable of taking care of them-

selves and discharging the duties of citizenship on arriving at maturity" (printed record, 129).

The act in question, as construed by the Supreme Court of Illinois in this case, is *not appropriate* and has no tendency to accomplish that object. To *reward* a young man who has arrived at *years of understanding* and *discretion*, for his *fraud* and *deceit* in inducing a violation of the act is not only a gross perversion of common morality but tends to defeat the object and purpose contended for and is not within the police power of the state. We are not concerned now with the operation of the act as applied to other cases. We are concerned with its *operation* and *validity* as applied to *this case* and *this case only*. We are not concerned as to whether or not the act would have been valid had the Supreme Court of Illinois held that it did *not* create and give to an injured employee a civil right and remedy for its violation or deprive the employer of his ordinary common law defenses. We are only concerned in the *effect* and *result* of the act *as interpreted* and *held* by the court.

Giving to the injured employee a remedy for a violation of the statute *induced* by his *deceit* and prohibiting a defense thereto, is an *encouragement* to *fraud* and *deceit* subversive of public morals, and instead of inuring to the *safety* of the class of persons whom it is said the statute was enacted to protect tends directly in the contrary direction.

(c) *Even if it be conceded that the legislature has power to prohibit the employment of minors under sixteen years of age, it does not follow that it can give a civil remedy for such violation to one who*

by fraud and deceit induces the violation of the statute.

Black, in his work on Constitutional Law, 2d edition, page 373, quoting from *in re Jacobs*, 98 N. Y. 98, said:

> "Generally it is for the legislature to determine what laws and regulations are needed to protect the public health and secure the public comfort and safety, and while its measures are calculated, intended, convenient, and appropriate to accomplish these ends, the exercise of its discretion is not subject to review by the courts. But they must have some relation to these ends. Under the mere guise of police regulations, personal rights and private property cannot be arbitrarily invaded, and the determination of the legislature is not final or conclusive. If it passes an act ostensibly for the public health, and thereby destroys or takes away the property of a citizen, or interferes with his personal liberty, then it is for the courts to scrutinize the act and see whether it really relates to and is convenient and appropriate to promote the public health. It matters not that the legislature may, in the title to the act, or in its body, declare that it is intended for the improvement of the public health. Such a declaration does not conclude the courts, and they must yet determine the fact declared and enforce the supreme law."

To the same effect is the decision of this court in *Mugler* v. *Kansas*, 123 U. S. 623.

The act in question must be classified under the title "Safety," that is, *ostensibly* it is for the *safety* of the young and inexperienced, protecting them from hazardous employments. As construed it does not tend to accomplish that purpose. As construed

it encourages those under the specified age to lie for the purpose of obtaining the *prohibited* employment. If required to tell the truth they would not be employed and the ostensible purpose of the act would obtain.

Judge Story defines "due process" as follows:

> "Due process of law in each particular case means such an exercise of the powers of government as the settled maxims of law permit and sanction under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases in which the one being dealt with belongs."
>
> Story on Constitution, 5th edition, section 1945.

The *settled maxims* of the law do not permit the legislature to take the property of a *deceived employer* and give it to the active *agent of deceit* for inducing the employer to violate a statute.

It is undoubtedly true, as held by this court in *Second Employers' Liability Cases*, 223 U. S. 1 (50), that a person has no property, no *vested* interest in any rule of the common law. Yet the legislature in changing the rules of the common law may not change those *fundamental maxims* based on the eternal principles of right and justice without violating the constitutional guarantee of "due process."

In *Wilkinson* v. *Leland et al.*, 2 Peters, 627-657, Mr. Justice Story said:

> "The fundamental maxims of a free government seem to require that the rights of personal liberty and private property should be held sacred. At least no court of justice in

> this country would be warranted in assuming, that the power to violate and disregard them—a power so repugnant to the common principles of justice and civil liberty—lurked under any general grant of legislative authority or ought to be implied from any general expressions of the will of the people."

And yet we have in this case an *absolute grant* of a *new right*, not known at common law, and a prohibition of the usual common law defenses. In other words, under the construction placed on this act, any employer who is deceived into employing a young man under sixteen years of age—and that by the young man himself—who happens to be injured as a result of accident or his own carelessness or even intentionally, while in such employ, has his property taken away and given to that young man.

There is no trial in the ordinary sense, for there can be none. A sentence of a court pronounced against a party without hearing him or giving him an opportunity to be heard, is not a judicial determination of his rights and is not entitled to respect in any other tribunal.

Windsor v. *McVeigh*, 93 U. S. 274.

Going through the forms was not a trial. It was a mere pretence. The result was certain from the beginning. Mr. Justice Field said in the *Windsor* case:

> "The law is, and always has been, that whenever notice or citation is required, the party cited has the right to appear and be heard; and when the latter is denied, the former is ineffectual for any purpose."

(d) *While ordinarily this court will not attempt to review and correct the errors of state tribunals in the general administration of the local laws,*

In re Converse, 137 U. S. 631.

Morley v. *Lake Shore & M. S. Ry. Co.*, 146 U. S. 162-171.

McNulty v. *California*, 149 U. S. 645.

Marchant v. *Pennsylvania R. R. Co.*, 153 U. S. 380-385.

but if a law or ordinance be systematically administered so as to violate the fourteenth amendment, the court will interfere.

Henderson v. *Mayor of New York*, 92 U. S. 259-273.

Chy Lung v. *Freeman*, 92 U. S. 275-279.

Neal v. *Delaware*, 103 U. S. 370.

Soon Hing v. *Crowley*, 113 U. S. 703-710.

Yick Wo v. *Hopkins*, 118 U. S. 356-373.

Williams v. *Mississippi*, 170 U. S. 213.

In the *Henderson* case Mr. Justice Miller said:

> "In whatever language a statute may be framed, its purpose must be determined by its *natural* and *reasonable effect*."

The *purpose* of the statute in question, as exemplified by its results in this case, is to punish one for being deceived and reward the deceiver, to *punish* the *innocent* and *reward* the *guilty*.

And in *Chy Lung* v. *Freeman*, *supra*, Mr. Justice Miller said:

> "If, as we have endeavored to show in the opinion in the preceding cases, we are at liberty to look to the effect of a statute for the test of

its constitutionality, the argument need go no further."

In *Neal* v. *Delaware, supra,* this court reversed a judgment of the Delaware court because the officers charged with the duty of selecting the jurors violated the constitution and laws of the United States by discriminating against persons of the negro race, and the trial court failed to redress the wrong.

In *Soon Hing* v. *Crowley, supra,* Mr. Justice FIELD, in delivering the opinion of this court, said:

> "The rule is general with reference to the enactments of all legislative bodies that the courts cannot inquire into the motives of the legislators in passing them, except as they may be disclosed on the face of the acts, or inferrible from their operation, considered with reference to the condition of the country and existing legislation. The motives of the legislators, considered as the purposes they had in view, will always be presumed to be to accomplish that which follows as the natural and reasonable effect of their enactments. Their motives, considered as the moral inducements for their votes, will vary with the different members of the legislative body. The diverse character of such motives, and the impossibility of penetrating into the hearts of men and ascertaining the truth, precludes all such inquiries as impracticable and futile. And in the present case, even if the motives of the supervisors were as alleged, the ordinance would not be thereby changed from a legitimate police regulation, *unless in its enforcement it is made to operate only against the class mentioned;* and of this there is no pretence."

In *Yick Wo* v. *Hopkins,* 118 U. S. 356-373, Mr. Justice Matthews said:

> "In the present cases we are not obliged to reason from the probable to the actual, and pass upon the validity of the ordinances complained of, as tried merely by the opportunities which their terms afford, of unequal and unjust discrimination in their administration. For the cases present the ordinances in actual operation, and the facts shown establish an administration directed so exclusively against a particular class of persons as to warrant and require the conclusion, that, whatever may have been the intent of the ordinances as adopted, they are applied by the public authorities charged with their administration, and thus representing the state itself, with a mind so unequal and oppressive as to amount to a practical denial by the state of that *equal protection of the laws* which is secured to the petitioners, as to all other persons, by the broad and benign provisions of the Fourteenth Amendment to the Constitution of the United States. *Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the constitution.*"

This language was cited with approval in *Williams* v. *Mississippi, supra.*

In the cases cited, the administration of the laws and ordinances which this court held violated the fourteenth amendment, was by administrative officers. In the case at bar, no complaint is made of

administrative officers but complaint is made of the action of the judicial department of the State leading to results subversive of fundamental principles.

(e) *Reading into this penal statute a civil remedy and abolishing all common law defenses thereto, were legislative and not judicial acts, transcend the power of the court and deprived plaintiff in error of "due process."*

Windsor v. *McVeigh*, 93 U. S. 274-282.

Scott v. *McNeal*, 154 U. S. 34-45.

Chicago, Burlington & Quincy R. R. Co. v. *Chicago*, 166 U. S. 226.

Home Telephone & Telegraph Co. v. *City of Los Angeles*, 33 Sup. Ct. Rep. 312.

Whether or not the legislature intended to create a new civil remedy is immaterial. Not having done so and having remained silent as to any legislative enactment on that subject, the court cannot supply the want of any legislative provisions which it may deem beneficial to the public good and helpful to suppress the evil aimed at by the legislature. The prerogative of the court to interpret language employed by the legislature in its statutes, and construe the words thereof, does not authorize it to annex new and complete provisions to such statutes or to apply new principles of law variant with the common law maxims in the application of the new provision so created by it.

Verdicts and judgments are not rendered according to the *law of the land* when bottomed solely on a law in the nature of a civil damage statute bodily created and annexed by the court to a criminal statute of the legislature.

It is the province of courts to decide what the law is, or has been, and to determine its application to particular facts in the decision of causes.

26 Amer. & Eng. Ency. of Law, 2d edition, page 597.

They must declare the law as it is but they should not under a pretence of construction encroach upon the legislative function of making laws for the future.

26 Amer. & Eng. Ency. of Law, 2d edition, page 597.

The object of all *interpretation* and *construction* of statutes is to ascertain and carry out the *intention* of the law makers and when the intention is ascertained it must always govern.

26 Amer. & Eng. Ency. of Law, 2d edition, page 597.

United States v. *Fisher*, 2 Cranch, 358.

Mr. Chief Justice Marshall in the *Fisher* case, construing an act of Congress which gave preference to the United States in cases of insolvency, said (page 386):

> "It is undoubtedly a well-established principle in the exposition of statutes, that every part is to be considered, and the *intention* of the legislature to be extracted from the whole. It is also true, that where great inconvenience will result from a particular construction, that construction is to be avoided, unless the meaning of the legislature be plain; *in which case it must be obeyed.*"

Farther on in the opinion he said (page 390):

> "That the consequences are to be considered in expounding laws, where the *intent is doubtful*, is a principle not to be controverted; but it is also true that it is a principle which must be applied with caution, and which has a degree of influence dependent on the nature of the case to which it is applied. Where rights are infringed, where fundamental principles are overthrown, where the general system of the laws is departed from, the *legislative intention* must be expressed with *irresistible clearness* to induce a court of justice to suppose a design to effect such objects."

The *intention* of the legislature must be sought in the *statute itself*, and it is only when the act is of doubtful or unambiguous meaning that the province of construction or interpretation begins.

26 Amer. & Eng. Ency. of Law, 2d edition, page 597.

United States v. *Wiltberger*, 5 Wheaton, 95.

St. Paul, etc. Railway Co. v. *Phelps*, 137 U. S. 528.

Bate Refrigerating Co. v. *Sulzberger*, 157 U. S. 1.

Sturges v. *Crowninshield*, 4 Wheaton, 202.

Doe v. *Considine*, 6 Wallace, 458.

Mr. Justice Lamar, in delivering the opinion of this court in the case of *St. Paul, etc. Railway Co.* v. *Phelps, supra* (page 533), said:

> "It was admitted that, according to the plain letter of the statute, the grant would include lands west of the Bois des Sioux River, in Dakota, and that the land in controversy is within that grant. It is also conceded that Congress

has the power to grant to a state lands in another state or territory, to aid in the construction of a railroad wholly within its own limits. But it is argued that the positive and express provision of the law must give way, and be controlled by the presumption founded upon an alleged policy of the government, that Congress, having in view the probable organization of Minnesota Territory into a state, intended to restrict the grant in question to lands within the limits of such future state. We see much in the act itself and in the circumstances which attended its enactment that repels such presumption."

Farther on in the opinion he said:

"We think that the *language* of those acts is *too plain and unequivocal* to need or even *to admit* the *aid* of an *extrinsic* rule of *construction* to get at the *intent* and meaning of Congress. The assumption of the appellee, that the uniform policy of the government, as it is called, arose from the construction put by the administrative department upon railroad grants, and that it arose with respect to the very first grant made by Congress in aid of a railroad, is erroneous. Counsel for the appellee have failed to bring to our attention any instance of such a construction, except the one now before the court. Had any such cases been presented when the language of the statutes under consideration was dubious and open to different interpretations, the established construction of them by the department charged with their execution would have very great force and generally a controlling one in the formation of the judgment of this court; *but where a statute, as in this case, is clear and free from all ambiguity, we think the letter of it is not to be disregarded in favor of a mere presumption as to what is termed the policy of the government, even though it may be the settled practice of the department.*"

The language used by Mr. Justice Harlan in delivering the opinion of this court in *Bate Refrigerating Co.* v. *Sulzberger, supra*, page 36, may well be applied to the case at bar.

> "*In our judgment the language used is so plain and unambiguous that a refusal to recognize its natural, obvious meaning would be justly regarded as indicating a purpose to change the law by judicial action based upon some supposed policy of Congress.* But, as declared in *Hadden* v. *Collector*, 5 Wall. 107, 111, 'What is termed the policy of the government with reference to any particular legislation is generally a very uncertain thing, upon which all sorts of opinions, each variant from the other, may be formed by different persons. It is a ground much too unstable upon which to rest the judgment of the court in the interpretation of statutes.' 'Where the language of the act is explicit,' this court has said, 'there is great danger in departing from the words used, to give an effect to the law which may be supposed to have been designed by the legislature. * * * *It is not for the court to say, where the language of the statute is clear, that it shall be so construed as to embrace cases, because no good reason can be assigned why they were excluded from its provisions.*' "

In *Doe* v. *Considine*, *supra*, Mr. JUSTICE SWAYNE, in construing a statute of descent of the State of Ohio, said:

> "The language of this clause is plain and unambiguous. There is nothing in the context, rightly considered, which qualifies or affects it. *There is, we think, no room for construction.* * * * Were we to adopt the construction claimed by the plaintiff's counsel, instead of adjudicating we should legislate. That we have

> no power to do. Our function is to execute the law, not to make it."

The fair meaning of the language used must not be unduly stretched for the purpose of reaching any particular case which, while it might appeal to the court, would plainly be beyond the limitations contained in the statute.

> *United States* v. *St. Anthony Railroad Co.*, 192 U. S. 524.

So decided by this court in construing a statute set up as a defense to a prosecution by the United States for cutting down and converting timber from public lands, the railroad company urging that the timber was "adjacent" to its railroad, though some 20 to 25 miles away. In the opinion it is said:

> "Although a liberal construction of the statute may be proper and desirable, yet *the fair meaning of the language used must not be unduly stretched for the purpose of reaching any particular case which, while it might appeal to the court, would yet pretty plainly be beyond the limitation contained in the statute.* While not to be construed so as to defeat the intent of the legislature, or to withhold what is given either expressly or by fair implication, it is surely improper to so extend the ordinary and usual meaning of the word as to permit the railroad company to enter upon any land of the government, as being adjacent, simply because the road wants the timber. The statute was not intended to furnish a general license to the company to enter upon any public land and to range to any extent thereon for timber for its road. In all cases it must be adjacent."

The statute under consideration is as silent as the tomb regarding any *civil remedy*, neither does it as-

sume or pretend to abolish the *common law defenses* of *contributory negligence, assumed risk* and *estoppel by fraud and deceit*. As to these questions the statute is silent. It is a plain, simple, criminal statute, purporting to be, by its title, for the purpose of regulating the employment of children, and section 11 prohibits the employment of persons under the age of sixteen years in certain employments under penalties provided in section 14.

It is not necessary to determine here whether the state would have a right to enforce the penalty against an employer who unwittingly and unknowingly employs a young man under sixteen years of age, or was deceived by the young man into employing him. A prosecution by the state to enforce the penalties of the act is an entirely different proposition from a *suit* by the *deceiver* to enforce a *civil liability*.

The arbitrary incorporation by a court in a criminal statute of private rights of action and civil remedies, new rules of evidence and an abrogation of the established principles of the law of the land, is not the construing of a statute but the unjust exercise by the judiciary of the functions of the legislature and is not "due process."

In *Windsor* v. *McVeigh*, 93 U. S., page 282, Mr. Justice Field, in delivering the opinion of the court, said:

> "*Though the court may possess jurisdiction of a cause, of the subject-matter, and of the parties, it is still limited in its modes of procedure, and in the extent and character of its judgments. It must act judicially in all things, and cannot*

> *they transcend the power conferred by the law.* If, for instance, the action be upon a money demand, the court, notwithstanding its complete jurisdiction over the subject and parties, has no power to pass judgment of imprisonment in the penitentiary upon the defendant. If the action be for a libel or personal tort, the court cannot order in the case a specific performance of a contract. If the action be for the possession of real property, the court is powerless to admit in the case the probate of a will. Instances of this kind show that the general doctrine stated by counsel is subject to many qualifications. The judgments mentioned, given in the cases supposed, would not be merely erroneous; they would be absolutely void; because the court in rendering them would transcend the limits of its authority in those cases."

In the case at bar, when the court held that the statute in question *created a new cause of action* where none existed at common law; that "a liability for damages resulting from its violation is created whether it is expressly so declared in the statute or not," and that the *common law defenses* were *not applicable* and "the law is that if the appellant employed the appellee in violation of the statute, it is liable if he was injured while in such employment," it transcended the limits of judicial authority and deprived the plaintiff in error of "due process."

The prohibitions of the fourteenth amendment operate upon the judiciary as well as the legislative department of the state.

In *Scott* v. *McNeal*, 154 U. S., page 45, Mr. Justice Gray, speaking for this court, said:

> "The fourteenth article of amendment of the Constitution of the United States, after other

provisions which do not touch this case, ordains, 'nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.' These prohibitions extend to all acts of the state, whether through its legislative, its executive, or its judicial authorities. (*Virginia* v. *Rives*, 100 U. S. 313, 318, 319; *Ex Parte Virginia*, 100 U. S. 339, 346; *Neal* v. *Delaware*, 103 U. S. 370, 397.) And the first one, as said by Chief Justice Waite in *United States* v. *Cruikshank*, 92 U. S. 542, 554, repeating the words of Mr. Justice Johnson in *Bank of Columbia* v. *Okely*, 4 Wheat. 235, 244, was intended 'to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice.'

"*Upon a writ of error to review the judgment of the highest court of a state upon the ground that the judgment was against a right claimed under the constitution of the United States, this court is no more bound by that court's construction of a statute of the territory, or of the state, when the question is whether the statute provided for the notice required to constitute due process of law, than when the question is whether the statute created a contract which has been impaired by a subsequent law of the state, or whether the original liability created by the statute was such that a judgment upon it has not been given due faith and credit in the courts of another state. In every such case, this court must decide for itself the true construction of the statute.* Huntington v. *Attrill*, 146 U. S. 657, 683, 684; *Mobile & Ohio Railroad* v. *Tennessee*, 153 U. S. 486, 492-495."

This doctrine was confirmed by this court in *Chicago, Burlington & Quincy Railroad Co.* v. *Chicago,*

166 U. S. 226, 233, where MR. JUSTICE HARLAN, speaking through the court said:

> "It is not contended, as it could not be, that the constitution of Illinois deprives the railroad company of any right secured by the fourteenth amendment. For the state constitution not only declares that no person shall be deprived of his property without due process of law, but that private property shall not be taken or damaged for public use without just compensation. But it must be observed that *the prohibitions of the amendment refer to all the instrumentalities of the state, to its legislative, executive and judicial authorities*, and, therefore, whoever by virtue of public position under a state government deprives another of any right protected by that amendment against deprivation by the state, 'violates the constitutional inhibition; and as he acts in the name and for the state, and is clothed with the state's power, his act is that of the state.' This must be so, or, as we have often said, the constitutional prohibition has no meaning, and 'the state has clothed one of its agents with power to annul or evade it.' *Ex parte Virginia*, 100 U. S. 339, 346-347; *Neal* v. *Delaware*, 103 U. S. 370; *Yick Wo* v. *Hopkins*, 118 U. S. 356; *Gibson* v. *Mississippi*, 162 U. S. 565. These principles were enforced in the recent case of *Scott* v. *McNeal*, 154 U. S. 34, in which it was held that the prohibitions of the fourteenth amendment extended to 'all acts of the state, whether through its legislative, its executive or its judicial authorities'; and, consequently, it was held that a judgment of the highest court of a state, by which a purchaser at an administration sale, under an order of a probate court, of land belonging to a living person who had not been notified of the proceedings, deprived him of his property without due process of law contrary to the fourteenth amendment."

To the same effect is *Home Telephone & Telegraph Co.* v. *City of Los Angeles*, 33 Supreme Court Reporter, 312, where Mr. CHIEF JUSTICE WHITE, speaking for the court said:

> "By the proposition the prohibitions and guaranties of the amendment are addressed to and control the states only in their complete governmental capacity, and as a result give no authority to exert federal judicial power until, by the decision of a court of last resort of a state, acts complained of under the 14th amendment have been held valid, and therefore state acts in the fullest sense. *To the contrary*, the *provisions* of the amendment as conclusively fixed by previous decisions are generic in their terms, are addressed, of course, to the states, but *also to every person, whether natural or juridical, who is the repository of state power. By this construction the reach of the amendment is shown to be co-extensive with any exercise by a state of power, in whatever form exerted.*"

There is nothing in the title of the statute in question, in the body of the act, or in the particular section 11 under consideration, from which it can reasonably or consistently be inferred that the legislature had any *intention* whatever to give to any person employed in violation of the act the right to maintain a *civil action* for injuries sustained while violating the act, simply and solely grounded upon a violation of the statute, nor is there the least ground for intimation or inference that the *common law defenses* of *assumed risk* and *contributory negligence were* intended to be abolished in such actions, and none others, or that any person who had reached the age of discretion and understanding might *deliberately*, by *fraud and deceit*, induce

a violation of the act and then maintain an action for injuries suffered solely as the result of such violation. The judgment of the court in this case deprives plaintiff in error of "due process." It is not according to the "law of the land."

(f) *The judgment of the court in this case also deprives plaintiff in error of "equal protection of the laws."*

As we have above shown by a statute of Illinois the common law of England "so far as the same is applicable and of a general nature * * * shall be the rule of decision and shall be considered as of full force until repealed by legislative authority."

Hurd's Illinois Statutes of 1909, page 578.

By the judgment of the court in this case, the plaintiff in error is deprived of those rules of decision, the established common law defenses to actions for personal injury and is placed in a class restricted to persons sued for a violation of this particular act. All other persons, firms and corporations against whom suits are brought by employes in Illinois to recover damages for personal injuries may set up and rely upon the common law defenses, save and except only those where the right of action is based upon a violation of this particular statute. As to such defendants there is no defense.

There are many other regulating statutes and ordinances in Illinois and many actions for personal injury are brought in its courts against employers by employes, many based upon violation of common law duties and many on violation of statutory duties, but in none of the cases mentioned, save and except

those sued for a violation of this particular act, are the defendants deprived of the usual common law rules of decision and the usual common law defenses, and while it may be true, as stated by this court in *Second Employers' Liability Cases*, 223 U. S., page 50, that "a person has no property, no vested interest in any rule of the common law," yet he does have an interest in being equally protected with his neighbors in like circumstances, by the "law of the land." This classification that singles out defendants sued for a violation of this particular statute is *arbitrary*, based on no sufficient reason, and violates the "*equal protection*" clause of the fourteenth amendment.

As instances of *unjust discriminations* in violation of the "equal protection" clause, we cite the following:

Gulf, Colorado & Santa Fe Ry. Co. v. *Ellis*, 165 U. S. 150.

Connolly v. *Union Sewer Pipe Co.*, 184 U. S. 540.

Cotting v. *Kansas City Stockyards Co. et al.*, 183 U. S. 79.

Southern Railway Co. v. *Greene*, 216 U. S. 400.

Missouri Pacific Railway Co. v. *Tucker*, 33 Sup. Ct. Rep. 961.

Chicago, M. & St. P. R. R. v. *Westby*, 178 Federal 619 (C. C. A. 8th Circuit).

In *Gulf, Colorado & Santa Fe Railway* v. *Ellis*, *supra*, an act of the legislature of Texas provided that anyone having a bona fide claim against rail-

way companies, not exceeding $50, might present it to any agent of the company and if it was not settled within thirty days thereafter, bring suit and recover the same, together with a reasonable attorney's fee not exceeding $10, and this court held that inasmuch as railway companies were burdened with attorneys' fees and other debtors were not so burdened that it was an arbitrary classification and violated the fourteenth amendment.

Speaking through Mr. Justice Brewer, the court said:

> "But it is said that it is not within the scope of the fourteenth amendment to withhold from states the power of classification, and that if the law deals alike with all of a certain class it is not obnoxious to the charge of a denial of equal protection. While, as a general proposition, this is undeniably true, *Hayes* v. *Missouri*, 120 U. S. 68; *Railroad Company* v. *Mackey*, 127 U. S. 205; *Walston* v. *Nevin*, 128 U. S. 578; *Bell's Gap Railroad* v. *Pennsylvania*, 134 U. S. 232; *Pacific Express Co.* v. *Seibert*, 142 U. S. 339; *Giozza* v. *Tierman*, 148 U. S. 657; *Columbia Southern Railway* v. *Wright*, 151 U. S. 470; *Marchant* v. *Pennsylvania Railroad*, 153 U. S. 380; *St. Louis & San Francisco Railway* v. *Mathews*, 165 U. S. 1; yet it is equally true that such classification cannot be made arbitrarily. The state may not say that all white men shall be subjected to the payment of the attorney's fees of parties successfully suing them and all black men not. It may not say that all men beyond a certain age shall be alone thus subjected, or all men possessed of a certain wealth. These are distinctions which do not furnish any proper basis for the attempted classification. That must always rest upon some difference which bears a reasonable and

> just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis."

The classification of the persons *benefited* by this ruling of the court is as *arbitrary* as the classification of those *burdened*, only persons suing for a violation of this act have the *benefit* of an action without defenses. Other employees, whether over or under sixteen years of age, bringing suits for similar injuries, grounded upon a violation of some common law duty or some statutory duty other than the statute in question, receive no such privilege. Other employees are not permitted a recovery for personal injuries suffered as a result of their own *negligence* or *fraud and deceit*. Only this small privileged class is permitted to take the property of his employer without any omission of duty on the part of the employer.

In *Cotting* v. *Kansas City Stockyards Co., supra*, a statute of Kansas, defining what should constitute public stockyards and the duties of the person or persons operating the same, etc., was held a violation of the fourteenth amendment because the *effect* of the statute was to make it apply only to the *Kansas City Stockyards Co.*, not to other companies or individuals engaged in like business in Kansas. The classification there was based on the *volume* of business done.

Quoting from the case of *Barbier* v. *Connolly*, 113 U. S. 27, 31, it was said by the court (page 106):

> "The fourteenth amendment, in declaring that no state 'shall deprive any person of life, liberty or property without due process of law, nor

deny to any person within its jurisdiction the equal protection of the laws,' undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; *that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs and the enforcement of contracts;* that no impediment should be interposed to the pursuits of any one except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offences."

Cooley in his work on *Constitutional Limitations*, 3d edition, page 391, says:

"Every one has a right to demand that he be governed by *general* rules, and a special statute which, without his consent, singles his case out as one to be regulated by a different law from that which is applied in all similar cases, would not be legitimate legislation, but would be such an arbitrary mandate as is not within the province of free governments. Those who make the laws 'are to govern by promulgated, established laws, not to be varied in particular cases, but to have one rule for rich and poor, for the favorite at court and the countryman at plough.' This is a maxim in constitutional law, and by it we may test the authority and binding force of legislative enactments."

We submit that the classification, as applied in this case, is discriminatory and invalid.

The court *in this case* has said that in *suits by* an *employee* against his *employer* for a *violation* of *this statute*, there can be interposed *no* defense. It is exactly the same as if the legislature should say that under an indictment for murder, if it is proven that the defendant killed the deceased he is guilty, that is, that he may not show in a court of justice that the killing was justifiable, excusable, or in self defense, or that it was accidental. In the case at bar, the classification is based solely upon a *violation of this particular statute*. It is an arbitrary and unjust classification.

In conclusion we submit:

1. That the *plaintiff*, *defendant in error* in this case, is an *adult*, *not a child*, having reached the age of *understanding* and *discretion*.

2. That having reached the *age of understanding and discretion* he is *responsible* for his *frauds* and *crimes* and should be treated as any other responsible person of his age and acquirements.

3. That the statute in question is a *penal* or *criminal* statute and as such must be strictly construed.

4. That the defendant, plaintiff in error, is a *person* within the meaning of the fourteenth amendment and entitled to the protections of that amendment.

5. That section 11 of the act in question, as construed by the Supreme Court of Illinois, is not within the *police power* of the state in that as construed it *does not tend* to *protect* the *health*, *morals*,

safety or *general welfare* of the state but on the contrary is an *encouragement to fraud and deceit, violation of law* and *danger* to those whom it is the duty of the state to protect.

6. That it violates the "due process" clause of the fourteenth amendment, in that even if it be conceded that the legislature has power to prohibit the employment of minors under sixteen years of age it does not follow that it may give a *civil remedy* for such violation to one who by *fraud* and *deceit induces* the *violation*, and at the same time deprives the deceived employer of all his usual and *common law* defenses in actions of this nature; in other words, to take the property of the *employer* and give it to the *injured employee* as a reward to the employee for his fraud and deceit and as a punishment to the employer for being deceived.

7. That the *arbitrary incorporation* by the court in this criminal statute *of a private right of action and civil remedy*, new rules of evidence and abrogation of the established principles of the "law of the land," is not construing the statute but the unjust exercise by the judiciary of the functions of the legislature in violation of the "law of the land."

8. That *abrogating all common law defenses* in actions for personal injury brought by an employee against an employer, based on a violation of the statute in question, and not abrogating those defenses in any other action brought for personal injuries by any employee against any employer, based

on the violation of any other statute, or of any common law duty, is an arbitrary and unjust discrimination and deprives the plaintiff in error of the "*equal protection of the laws.*"

We submit that the judgment of the Supreme Court of Illinois should be reversed.

ALMON W. BULKLEY,
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Attorneys for Plaintiff in Error.

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Office Supreme Court, U. S.
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JAMES H. McKENNEY,
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IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1913.

No. 54.

STURGES AND BURN MANUFACTURING COMPANY,
Plaintiff in Error,

vs.

ARTHUR BEAUCHAMP,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

Brief and Argument for Defendant in Error.

GEORGE E. GORMAN,
ATTORNEY FOR DEFENDANT IN ERROR.

JOHN M. POLLOCK,
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BARNARD & MILLER PRINT, CHICAGO

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Brief and Argument for Defendant in Error.

STATEMENT.

The questions presented by the record are not as stated by plaintiff in error. The only plea raising a Federal question is the third, which says the statute in question in unconstitutional and void as contravening the 14th amendment to the Constitution of the United States (Rec., p. 40; transcript of record, p. 25), and the constitutionality of the statute seems by inference from the argument of plaintiff in error

to be here conceded and only its application to the case at bar objected to.

The questions now urged here were neither raised by the plea of plaintiff in error nor by the motion for a new trial (pp. 170-172; Rec., pp. 119 trans. of Rec.), nor the motion in arrest of judgment (immediately following in the record the motion for a new trial), nor by any proceeding in the case.

The defendant in error was injured in the due course of his employment for plaintiff in error while defendant in error was working under the age of sixteen years in one of the employments declared by the statute in question extra hazardous and in which it is made a misdemeanor to employ persons under the age of sixteen years.

There was some dispute in the record as to whether or not the defendant in error had misrepresented his age, but no showing is made in the record of any diligence on the part of plaintiff in error to learn his true age except by the alleged taking of a statement from defendant in error, and even as to that no affidavit was required, nor even a statement in writing.

We claim that the alleged unconstitutionality of the statute is here abandoned and as that was the sole question raised in the trial court there is nothing legally presented to the court here for decision but shall nevertheless briefly argue the grounds upon which we believe the said statute to be constitutional, and shall also discuss the objections which counsel here make as to the application of the statute to the case at bar.

BRIEF OF ARGUMENT.

I.

The only plea filed raising a Federal question was the third, which says the statute in question is unconstitutional and void as contravening the 14th amendment in that it deprived the parties of their right to contract. (Rec., p. 40; transcript of Rec., p. 25.)

II.

The only general questions raised in the brief and argument for plaintiff in error are (1) whether a person who is himself *in delicto* may recover and (2) whether a rule of law permitting such recovery may be made by decision of the court or must it be promulgated by some other branch of the government.

(See statement of questions raised, page 1 of argument for plaintiff in error.)

III.

It will be seen that the plea raises one question and the argument another, and although the plea of unconstitutionality of the statute itself is apparently abandoned, we have nevertheless briefly discussed it and upon this point we think it needless to cite any

other decision than the one by the Supreme Court of Illinois in the case at bar. The opinion in this case will be found at pp. 182 Rec.; 126 of Transcript of Rec., *et seq.*, and in Vol. 250 Ill. Sup. Ct. Rep., p. 303.

IV.

Upon the proposition as to whether a person who is himself at fault may constitutionally recover from another by whose crime he is injured and whether a rule of law permitting him to do so may be announced by the judiciary or is constitutionally in the exclusive jurisdiction of some other governmental departments, we have briefly noted:

(a) That it has never been customary to claim that contributory negligence or other fault or neglect of the plaintiff was a defense to a criminal or wilful injury.

(b) That the constitutional cause of action in any tort case was the thing done or omitted to be done by the defendant which damaged the plaintiff and the defendant who is guilty of a tort cannot complain as to state policy in regard to what conduct of the plaintiff shall constitute a defense and the courts may as well announce this as the legislature.

(c) We have cited Story's Equity Jurisprudence, Vol. 1, p. 300, to the effect that even in a court of chancery, it is no defense that the plaintiff is *in delicto* but only when *in pari delicto* which is quite a different thing.

(d) The compensation paid by any business to an injured employee is only secondarily for his benefit

being primarily a precaution against the loss falling upon the community.

Therefore, the question as to in how far the conduct of the injured man shall prevent a recovery is a question of state policy and involves no constitutional right of the parties.

V.

The only real question there could be in this case were every phase of the matter preserved by the record is whether it be an unreasonable exercise of the police power for the protection of the health, morals and safety of the community to restrict the employment by boys and girls under sixteen years of age to employments which are not extra-hazardous—it being once granted that this is reasonable the judgment in this case follows with all the logical sequence of a syllogism.

For other Illinois statutes for the protection of youth which have been in force a long time and held valid we refer to the Statute of Rape, Ill. Rev. Statutes of 1911, p. 805, being Section 237 of the Criminal Code.

Statute on selling liquor to minors, Ill. Rev. Statutes 1911, p. 955, being Sec. 6 of the Dram-Shop Act.

Statute making it an offense to sell cigarettes or tobacco to any minor under sixteen years of age without an order from a parent or guardian. Ill. Rev. Statutes 1911, p. 76, being Section 42f of the Criminal Code.

Statute on Marriages, Rev. Statutes of Illinois, p. 1514, being Section 3 of Chapter 89.

Statute forbidding the employment of boys under sixteen and women or girls of any age in manual labor in a mine. Rev. Statutes of Illinois 1911, p. 1562, being Sec. 28 of the Mines and Miners Act.

ARGUMENT.

This case is so fully and ably considered and discussed in the opinion of the Illinois Supreme Court (p. 126 Trans. of Rec.) that any further discussion would seem a work of supererogation, but it may not be out of place to briefly make a few observations as to the general aspects of the case, as well as to the status of the plaintiff in error in this court in view of the record. *The issues attempted to be made here are not the issues made in the trial court.*

With all due respect to the learned counsel for plaintiff in error, the questions presented by this record, are not as stated by them—the record shows that the only plea raising any Federal question is the third (Abst., p. 6), which says that the statute in question contravenes the fourteenth amendment to the Constitution of the United States *in that it deprives persons, firms and corporations of their property, viz., the right to contract for work, labor and services without due process of law.* There was no plea filed setting up fraud and deceit on the part of the plaintiff in respect to age and that by reason thereof the plaintiff had no action because of the said fourteenth amendment. And the plea as to the contravention of the fourteenth amendment was limited not only to a claim that *the statute as a whole* was "unconstitutional and void," but was so *on the single and only ground that it deprived the parties*

of a right to contract for work. Neither does the motion for new trial or in arrest of judgment or any other proceeding in the trial court raise any other or further Federal question.

That the statute as a whole is valid and constitutional seems to be now in this court admitted by inference, from the statement, page 1 of the argument, as to the questions here involved. These questions which counsel there say are the ones before this court, refer only to the *application* of the statute to a civil liability and not to the general validity or invalidity of the statute.

A Discussion of the Only Issue Raised in the Trial Court.

Notwithstanding that the only Federal questions raised in the trial court seem to be here waived, it may not be amiss to briefly discuss them.

(a) Does a boy under sixteen years of age and people who desire *to make contracts with him*, have a constitutional right to do so in any case.

(b) And if so, does the State have a right to prohibit to such parties the ability to contract for employments which are highly dangerous?

First. Considering this question, we find that in the State of Illinois and most other states of the Union, the right to enter into contracts of any kind by a boy is quite restricted until the boy is of the age of twenty-one years,—yet no one has ever claimed, so far as we know, that this is a violation of the fourteenth amendment.

Second. In this state and in many others, any

male person of the age of seventeen and upwards, who has carnal knowledge of a female person under the age of sixteen, is guilty of a felony, whether with or without her consent and may be imprisoned therefor for life;—moreover, it is no defense that she deceived him as to her age; he deals with her at his peril. But would any one claim that thereby his constitutional rights were infringed?

The age of consent was formerly much less, but the former idea as to the age of discretion or indiscretion in that regard is not now controlling—"*Tempora mutantur et nos mutamer in illis.*"

Third. In Illinois, no male person under the age of eighteen years and no female under the age of sixteen years can contract a legal marriage even with the parent's consent, except in a bastardy case. This is quite different from the feeling in the time of Queen Elizabeth, when Lady Capulet said to her daughter, Juliet, who would not be fourteen years of age till Lammastide: "By my count, I was your mother much upon these years that you are now a maid."

It is somewhat disputed that the world is making any advancement in any but material conditions but it is to be hoped that it is, and if there are any milestones at all marking progress, these laws for the protection of girls and boys should be counted among them.

There is also a statute in force in Illinois and many other states which makes it a misdemeanor to sell intoxicating liquor to any minor. This has never been held to be in violation of any constitutional

right, but it has uniformly been held to be no defense that the seller believed the minor to be of age. The same is true of various cigarette laws

The law in question here in respect to boys and girls working at dangerous employments was not passed solely nor primarily for the boy in question here, nor others like him, but for the benefit of the community, the Commonwealth of Illinois, and the greater Commonwealth of the whole great country of which it is proud to be an integral part. Shall our young girls be raped and ruined or even ruined by too early marriage or shall our boys be ruined by drink or crippled and ruined by extra-hazardous employments either with or without their consent? The question is the same—in each case, the individuals are being conserved not so much for their own benefit but for the greater reason that they may become useful members of the body politic, instead of a burden on it, and may reproduce and perpetuate a useful citizenship, every deterioration of any individual, either physically or in earning capacity, being a distinct loss to the community, both in the present and indefinite in the future in its possible effect on posterity.

Is the Fixing By the Statute of the Age of Sixteen Years Unreasonable?

As we understand it, the only contention made here and now in this regard by the plaintiff in error (if there be in fact any contention as to the general validity of the law) is not that such a law might not be valid as to persons under the age of fourteen, but that restricting the age at which employers may use

boys and girls in these dangerous employments to the age of sixteen years and upwards is an unreasonable use or abuse of the inherent powers of a state to pass laws in respect to health, safety and morals of its citizens. The same may be said with equal force of the above mentioned rape statute, of said drink statute and said marriage statute. Within reasonable limits, nobody has ever contended but that the age at which persons may become *sui juris* is peculiarly a question of policy for the state and at certain times and in certain countries, the age at which a person became of full age for all purposes has been placed as high as thirty years, in fact in some countries such condition does not absolutely result until the death of the parents.

If, as apparently argued by counsel, the age of absolute discretion as a fact is reached at fourteen years, persons of that mature age should have the same right to buy cigarettes and intoxicating liquors enter into general contracts or to marry or consent to carnal intercourse, etc., that any other adult has. It should require no discussion to show the fallacy of their argument in this regard.

Actual Intent Not Necessary to the Commission of a Crime.

Now, if the age at which a boy may be employed at certain dangerous employments be placed by the state at above the age of sixteen years and the fixing of such age be not unreasonable, then it will not be contended, we take it, if it be made a crime, as in the instance of the statute in question, to employ such persons in such way, but that the *actual* intent or

knowledge of the parties is immaterial in the commission of the crime. This is true of the statutes of rape, selling intoxicants to minors, above mentioned and of all such statutes. And as for the facts in the case at bar no showing was made of any diligence whatsoever to learn the true age of the boy, but plaintiff in error relied solely on an alleged oral contract with the boy himself that he was over sixteen.

As to the Civil Remedy in These Cases.

If in any case, a guilty party may be convicted and punished criminally, *a fortiori*, a civil liability may be imposed upon him. But, in the case at bar, it is said (a) that the statute confers no civil remedy; (b) that in any event, even if the statute be so construed, there is no statute or any law of the State of Illinois, which should deprive the plaintiff-in-error of the common law defenses of contributory negligence and assumed risk; (c) that because of an alleged misstatment of age the defendant in error should be deprived of any remedy.

As to these things, we wish first to note again that these questions (if they be in any view Federal questions) were not preserved in any way in the record here for review, as the sole plea here as before noted was that the statute in question was unconstitutional and void because of an infringement of the right of the parties to contract.

But assuming for the sake of argument that these contentions do constitute Federal questions and that they were duly and properly preserved for review in this court what then?

WHAT CONDUCT ON THE PART OF A PLAINTIFF IN A TORT CASE SHALL CONSTITUTE A DEFENSE IS A MATTER OF STATE POLICY AND NOT A MATTER OF CONSTITUTIONAL RIGHT OF THE TORT-FEASOR.

First. If it was a crime to employ this boy at the work in question, then he was injured purely and solely as the result of the crime of plaintiff in error, and it surely is a question of State *policy* as to whether or not the victim of the crime shall be cut off from compensation for his injury by reason of his conduct in the matter, and not a matter of any constitutional right of the criminal plaintiff in error. Indeed, even if there were no question of crime, but merely that of negligence, no question has ever been raised as to the right of each state to say for itself as a matter of State policy just how far if at all these matters shall be considered a defense and we respectfully submit it is not for the Federal government to say whether this policy shall be dictated by the legislature or by the courts of the state.

It has long been the law in Illinois that contributory negligence was not a defense to a wilful or wanton injury, and there is, of course, a constructive if not actual wilfulness and wantonness in every crime. For a great many years it was the law in Illinois that in no case was contributory negligence a defense, provided that the negligence of the plaintiff was, *as compared with the negligence of the defendant, slight.*

As to the doctrine of the assumption of risk in Illinois, it has in years past been in its application as fluctuating as the sand of the sea. But we believe nobody ever thought that any of these vary-

ing decisions would in any sense involve a Federal question. Moreover, as the doctrine of assumption of risk rests wholly on a contractual basis and under the statute in question there could be no legal contractual relation, we cannot see how this doctrine could in any event be invoked.

A great deal is said by counsel about its being unconstitutional to permit defendant in error to profit from his own alleged wrong.

(a) This is not the defense set up by the plea of plaintiff in error;

(b) This injury because criminally caused was at least constructively wilful and any fault on the part of the plaintiff as above said has not usually or customarily been regarded as a defense against a wilful injury;

(c) Where two parties are guilty of a wrong which results in an injury to one, the question as to who shall bear the loss and in what proportion is merely a question of state policy and not a privilege or immunity to which any criminal or wrongdoer has any constitutional right.

The general doctrine which in most, but by no means all, negligence cases which inhibits a recovery by one who is himself at fault by being contributorily negligent, or otherwise, is based in reality at the bottom upon the sole ground that such a law tends to promote care and deter recklessness and carelessness among those subject to injury and is therefore a beneficial policy on the whole for the state, and is not a defense to which the tortious or crimi-

nal defendant has any inherent claim or constitutional right.

It is the law of many states where A is injured by the negligence of B and A's own negligence "has contributed in any degree to the injury," he cannot recover anything from B, but must stand the entire loss occasioned by the negligence of B as well as himself. That this judicial policy infringed anybody's constitutional rights has never even been urged.

These defenses are not statutory as a rule and are not so in Illinois, but court made, because it seemed to the courts of last resort in Illinois that as a rule such a policy was best calculated to conserve the best interests of the body politic as a whole. Therefore, the same court which adopted this policy may, by reason of changed conditions or more enlightened reason, and in such cases as logically demand it, change its policy without in any way infringing any constitutional right. Moreover, it has never been the law, by any manner of means, either in Illinois or elsewhere, that in all cases, has a plea that the plaintiff was *in delicto* been a defense either partial or complete. Even in a court of equity, into which the complainant must come by all precedent with clean hands, it has always been incumbent upon the defendant who claimed as a defense that the complainant was *in delicto*, to show that he was *in pari delicto*. In Story's Equity Jurisprudence, Vol. 1, Sec. 300, he says:

> "And indeed in cases where both parties are *in delicto* concurring in an illegal act, it does not always follow that they are *in pari delicto*.

> for there may be and very often are very different degrees in their guilt. One party may act under circumstances of opposition, oppression, hardship, undue influence *or great inequality of condition or age* so that his guilt may be far less in degree than that of his associate in the offense."

This quotation applies very thoroughly to the case at bar,—the State of Illinois considers the inequality between the parties in the case of the employment of boys and girls under the age of sixteen years at dangerous employments so great that while he who so employs the boy or girl is guilty of a crime, the girl or boy employed is not by the statute or otherwise made guilty of any offense. Therefore, when the plaintiff in error in the case at bar was guilty of a crime while defendant in error was not, even though he misrepresented his age, can they therefore be said in a civil action to be *in pari delicto?* And could they be said to be *in pari delicto* under all the circumstances of such a case, even if the statute had provided a penalty on both parties,—where the very basis of the statute is the inherent inability of youth to care for itself,—the same as in the rape statutes, the drink and cigarette statutes—so that there is no inequality in any view between the two alleged contracting parties. THE DAMAGES TO BE PAID IN THIS CASE ARE NOT AS A REWARD OF MERIT TO THE PLAINTIFF, BUT PRIMARILY THAT HE SHALL NOT BECOME A BURDEN UPON THE COMMUNITY.

Reverting again to the thought that this law was not passed solely for the benefit of the boys and girls themselves, but also for the benefit of the community, this view of the matter not only applies to

the future of the race, but even more particularly to the view that the injury which, by reason of a lack of judgment, may happen to the boys and girls in these dangerous employments, may make them a charge on the community. When a working boy or girl is hurt the financial loss must fall somewhere, and in such cases as the one at bar, if not on the criminal who caused the injury, then at first perhaps on the parents or the community at large and later in most instances alone on the community at large. In other words, the compensation paid in any case is not by any means intended alone for a benefit to the injured boy, but more in the nature of a provision for his support in part, so that the loss will fall upon the criminal corporation which employed him instead of upon the community.

WHAT CONSTITUTIONAL OBJECTION IS THERE TO COMPELLING ANY BUSINESS WHICH IS EXTRA HAZARDOUS TO THE COMMUNITY TO BEAR ITS OWN LOSSES OF LIFE AND LIMB WHETHER TO CHILDREN OR ADULTS?

It has already been held constitutional in a large number of states, irrespective of any illegality, that a business which in the nature of things naturally will cause damage must bear the loss which it occasions, rather than the community. In this connection, we refer to the dram shop acts of various states of the Union, including Illinois. In Illinois, any person who contributes, even in part, to the intoxication of another, by selling or giving him intoxicating liquor, and who, owning a building, knowingly permits intoxicating liquor to be sold or given away therein which so contributes and by reason thereof any person is injured in person or property, such

person has a right to recover his damages from such person so selling or giving away the intoxicating liquor or the person who owns the building and knowingly permits the sale or gift as aforesaid.

Let it be noted in respect to this law, which has never anywhere been held to be unconstitutional, that the business which causes the injury pays the damage without respect to any illegality of the sale or any fault whatsoever on the part of the defendant. The drink which in part causes the intoxication may be sold or given away to a perfectly sober man who has not had a drink before in ten years or in his life and still the giver or seller and the owner of the building may be compelled to respond in damages. The action is founded at bottom upon the theory that the business is intrinsically dangerous and the man who enters upon it impliedly contracts with the state to take care of its consequences. Upon the same principle, no one can avoid the payment of damages to any one for injuries in work done for him which is intrinsically dangerous, although the work is done by what is otherwise to all intents and purposes an independent contract.

The idea underlying all of these cases is to let the business take care of its own loss and not have the loss fall upon the community at large and in so holding there is no infringement of anyone's constitutional rights. If any business cannot take care of its own incidental loss and damage, it is not a good business for the community, and no good reason can be seen why any such business should be supported by the community. If any employer does not care to

take the entire risk of such loss, he can insure himself, or with others of the same business form a guild so he can in this or other ways protect himself against more than his general share of the damage the business causes. We refer to this dram shop law as an illustration of the right of any state to make any particular business pay for the damage it causes even if such damage be by reason of a perfectly legal transaction with a person of the most mature years and brilliant mental ability and attainments. If this be true, what about the right of a state to make a business pay for the damage it causes when it criminally employs in extra-hazardous employments boys and girls whose immature years, necessities and circumstances in life place them upon a very different footing from their employers?

The laws restricting the hours in which females can work in certain employments was far more open to argument before this honorable court's decision thereon than the statute in question here. The laws restricting the hours of work for females in certain employments without limit as to age, no doubt make for hardship in many cases and are certainly more difficult of defense as to constitutionality than any laws restricting the activity of minors and still if these laws had not been upheld by this Honorable Court it would have been a great public calamity—for these laws undoubtedly mark a step in advance for the general good and welfare of the republic and are necessary in view of our changed and changing conditions of life and labor.

WITHIN REASONABLE LIMITS ALL OF THESE LAWS RE-

LATING TO THE HEALTH, MORALS OR SAFETY OF THE PEOPLE ARE MATTERS OF STATE POLICY AND COME WITHIN THE POLICE POWER.

Within reasonable limits, all of these laws relating to the health, morals or safety of the people are matters of state policy. And in the case at bar, we do not believe this court will say that the State of Illinois has gone beyond all reasonable limits in prohibiting the employment of boys and girls under the age of sixteen years in extra-hazardous employments, nor further in holding that in case of an injury resulting from such employment that the loss fall upon the business which has occasioned it, rather than upon the community at large, and those are, after all, when we get to the bottom of it, all of the questions which there could possibly be in this case if the record were perfect.

CONCLUSION.

And we shall close with the statement we made in the beginning, viz.: the only question the record raises is as to the constitutional rights of a boy under sixteen years of age, and a corporation which desires to employ him *to contract* for work which the State of Illinois considers extra-hazardous for the boy by reason of the nature of the work and the immaturity of the boy, and consequently a menace to best interests of the community at large. And this question has been abandoned by plaintiff in error in this court; so that there is in any event apparently nothing before the court for decision in this case.

GEORGE E. GORMAN,
Attorney for Defendant in Error.

JOHN M. POLLOCK,
Of Counsel.

STURGES & BURN MANUFACTURING COMPANY *v.* BEAUCHAMP.

ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

No. 54. Submitted November 3, 1913.—Decided December 1, 1913.

A State is entitled to prohibit the employment of persons of tender years in dangerous occupations; and in order to make the prohibition effective it may compel employers at their peril to ascertain whether their employés are in fact below the age specified.

Absolute requirements as to ascertaining age of employés of tender years are a proper exercise of the protective power of government; and if the legislation has reasonable relation to the purpose which the State is entitled to effect it is not an unconstitutional deprivation of liberty or property without due process of law.

A classification in employment of labor of persons below sixteen years of age is reasonable and does not deny equal protection of the laws.

The provisions of the Child Labor Act of Illinois of 1903 involved in this case are not unconstitutional as denying due process of law, as

depriving the employer of liberty of contract, or of his property by requiring him at his peril to ascertain the age of the person employed, or as denying him the equal protection of the law.

250 Illinois, 303, affirmed.

THE facts, which involve the constitutionality under the Fourteenth Amendment of the Illinois Child Labor Act of 1903, are stated in the opinion.

Mr. A. W. Bulkley and *Mr. C. E. More* for plaintiff in error:

The common-law rule of contributory negligence applies to minors. 7 Am. & Eng. Ency. of Law, 2d ed., p. 409; *Heiman* v. *Kinare*, 190 Illinois, 156.

The common-law rule of contributory negligence has not been abolished by child labor statutes. *Berdos* v. *Tremont Mills*, 209 Massachusetts, 489–498; *Beghold* v. *Auto Body Co.*, 149 Michigan, 14; *Bromberg* v. *Evans Laundry Co.*, 134 Iowa, 38, 46; *Braasch* v. *Michigan Stove Co.*, 118 N. W. Rep. 366; *Burke* v. *Big Sandy Coal Co.*, 68 W. Va. 421; *Darsam* v. *Kohlmann*, 123 Louisiana, 164, 171, 172; *Dalm* v. *Bryant Paper Co.*, 157 Michigan, 550; *Evans* v. *American Iron Co.*, 42 Fed. Rep. 519; *Gaines Leathers* v. *Blackwell Tobacco Co.*, 144 N. Car. 330; *Iron & Wire Co.* v. *Green*, 108 Tennessee, 161, 165; *Jacobson* v. *Merrill Mill Co.*, 107 Minnesota, 74; *Kirkham* v. *Wheeler-Osgood Co.*, 39 Washington, 415; *Nairn* v. *National Biscuit Co.*, 120 Mo. App. 144, 147; *Nickey* v. *Steuder*, 164 Indiana, 189, 196; *Norman* v. *Virginia-Pocahontas Co.*, 68 W. Va. 405; *Perry* v. *Tozer*, 90 Minnesota, 431; *Peters* v. *Gille Mfg. Co.*, 133 Mo. App. 412, 419; *Queen* v. *Dayton Coal Co.*, 95 Tennessee, 458, 465; *Rolin* v. *Tobacco Co.*, 141 N. Car. 300; *Roberts* v. *Taylor*, 31 Ontario, 10; *Sharon* v. *Winnebago Mfg. Co.*, 141 Wisconsin, 185, 189; *Smith* v. *National Coal Co.*, 135 Kentucky, 671; *Sterling* v. *Union Carbide Co.*, 142 Michigan, 284; *Syneszewski* v. *Schmidt*, 153 Michigan, 438.

Corporations are persons within the Fourteenth Amendment. *Duncan* v. *Missouri*, 152 U. S. 377; *Gulf, Col. &c. Railway* v. *Ellis*, 165 U. S. 154; *Hayes* v. *Missouri*, 120 U. S. 68; *Lowe* v. *Kansas*, 163 U. S. 88; *Minneapolis Railroad Co.* v. *Beckwith*, 129 U. S. 29; *Santa Clara County* v. *Southern Pac. Ry.*, 118 U. S. 394.

Courts will interfere to correct errors of state tribunals if law is administered so as to violate the Fourteenth Amendment. *Chy Lung* v. *Freeman*, 92 U. S. 275–279; *Henderson* v. *New York*, 92 U. S. 259–273; *Neal* v. *Delaware*, 103 U. S. 370; *Soon Hing* v. *Crowley*, 113 U. S. 703, 710; *Williams* v. *Mississippi*, 170 U. S. 213; *Yick Wo* v. *Hopkins*, 118 U. S. 356–373.

Defendant in error Beauchamp was an adult and not a child. *Allen* v. *State*, 7 Tex. App. 298; 16 Am. & Eng. Ency., 2d ed., p. 263; 51 Am. Reports, 293; *Bell* v. *State*, 18 Tex. App. 53; Black's Law Dict.; Century Dict.; Hurd's Illinois Stat. 1912, c. 38, Par. 282, p. 818, and § 7, Pars. 279, 280, 281 and 282; Id., c. 3, § 18, p. 11; Id., c. 4, § 4, p. 36; Id., c. 64, §§ 1, 3, p. 1261; *McGregor* v. *State*, 4 Tex. App. 599; *Quattlebaum* v. *Triplett*, 69 Arkansas, 91.

For distinction between contributory negligence and assumption of risk, see *Berdos* v. *Tremont Mills*, 209 Massachusetts, 489–497; *Cleveland & St. L. Ry. Co.* v. *Baker*, 33 C. C. A. 468; 91 Fed. Rep. 224; *Narramore* v. *Cleveland & St. L. Ry. Co.*, 96 Fed. Rep. 298–304; *Un. Pac. Ry. Co.* v. *O'Brien*, 161 U. S. 451.

The judgment of the Illinois courts deprives plaintiff in error of equal protection of the laws. *Chicago &c. R. R.* v. *Westby*, 178 Fed. Rep. 619; *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540; *Cotting* v. *Kansas Stockyards Co.*, 183 U. S. 79; Cooley on Const. Lim., 3d ed., p. 391; *Gulf, Col. &c. Ry. Co.* v. *Ellis*, 165 U. S. 150; *Mo. Pac. Ry. Co.* v. *Tucker*, 230 U. S. 340; *Southern Ry. Co.* v. *Greene*, 216 U. S. 400.

The legislature has no power to give civil remedy to one

guilty of fraud and deceit. Black on Const. Law, 2d ed., p. 373; *Mugler* v. *Kansas*, 123 U. S. 623; Story on Const., 5th ed., § 1945; *Wilkinson* v. *Leland*, 2 Pet. 627, 657; *Windsor* v. *McVeigh*, 93 U. S. 274.

Reading into the statute a civil remedy and abolishing common-law defenses are legislative and not judicial acts and transcends power of court. 26 Amer. & Eng. Ency., 2d ed., p. 597; *Bate Refrigerating Co.* v. *Sulzberger*, 157 U. S. 1; *Chicago, B. & Q. R. R. Co.* v. *Chicago*, 166 U. S. 226; *Doe* v. *Considine*, 6 Wall. 458; *Home Telephone Co.* v. *Los Angeles*, 227 U. S. 278; *Scott* v. *McNeal*, 154 U. S. 34–45; *St. Paul &c. Ry. Co.* v. *Phelps*, 137 U. S. 528; *Sturges* v. *Crowninshield*, 4 Wheat. 202; *United States* v. *St. Anthony R. R. Co.*, 192 U. S. 524; *United States* v. *Fisher*, 2 Cr. 358; *United States* v. *Wiltberger*, 5 Wheat. 95; *Windsor* v. *McVeigh*, 93 U. S. 274, 282.

The statute as held and enforced is not within the police power. *Chicago* v. *Gunning System*, 213 Illinois, 628; *Collins* v. *New Hampshire*, 171 U. S. 30; *In re Jacobs*, 98 N. Y. 98; *Lawton* v. *Steele*, 152 U. S. 133; *Minnesota* v. *Barber*, 136 U. S. 313, 320; *Mugler* v. *Kansas*, 123 U. S. 623, 661; *Ruhstrat* v. *The People*, 185 Illinois, 133; *State* v. *Caspare*, 80 Atl. Rep. 606. 613 (Md.); *Yick Wo* v. *Hopkins*, 118 U. S. 356, 370.

The maxim "No one acquires a right of action from his own wrong" applies to minors. 16 Amer. & Eng. Ency., 2d ed., p. 311; *Barham* v. *Turbeville*, 1 Swan. 437; Bigelow on Estoppel (5th ed.), p. 606; *Commander* v. *Brazil*, 41 So. Rep. 497 (Miss.); *Coleman* v. *Himmelberger Land Co.*, 79 S. W. Rep. 981; 22 Cyc., Title Infants, p. 512; *Ex parte Banking Asso.*, 3 DeG. & J. 63; *Edgar* v. *Gertison*, 112 S. W. Rep. 831; *Ferguson* v. *Bobo*, 54 Mississippi, 121; *Hall* v. *Timmons*, 2 Rich. (S. C.) 120; 57 L. R. A. 673, n.; *Matthews* v. *Cowan*, 59 Illinois, 341; *Munden* v. *Harris*, 134 S. W. Rep. 1076–1080; *Pace* v. *Cawood*, 110 S. W. Rep. 414 (Ky.); *Parker* v. *Elder*, 11 Humph. 546; *Rice* v.

Boyer, 108 Indiana, 472; *Sanger* v. *Hibbard*, 53 S. W. Rep. 330; *Vasse* v. *Smith*, 6 Cranch, 226; *Vinton* v. *State*, 52 S. E. Rep. 79; *Wright* v. *Snowe*, 2 DeG. & Sm. 321; *Williamson* v. *Jones*, 27 S. E. Rep. 418; *Whittington* v. *Wright*, 9 Georgia, 29.

The statute in question is a penal statute to be strictly construed. *Bandefield* v. *Bandfield*, 75 N. W. Rep. 287; *Field* v. *United States*, 137 Fed. Rep. 6; *Huntington* v. *Attrill*, 146 U. S. 657; *Sarlls* v. *United States*, 152 U. S. 570, 575; *The Ben R.*, 134 Fed. Rep. 784; *United States* v. *Harris*, 177 U. S. 305, 310; *United States* v. *Wiltberger*, 5 Wheat. 96; see also *Am. Car Co.* v. *Armentraut*, 214 Illinois, 509; *Illinois Central R. R. Co.* v. *O'Connor*, 189 Illinois, 564; *Strafford* v. *Republic Iron Co.*, 238 Illinois, 371.

Mr. George E. Gorman and *Mr. John M. Pollock* for defendant in error.

Mr. Justice Hughes delivered the opinion of the court.

The Sturges and Burn Manufacturing Company is a corporation engaged in manufacturing tinware and other metal products. It employed Arthur Beauchamp, the defendant in error, who was under sixteen years of age, as a press hand to operate a punch press used in stamping sheet metal. Beauchamp was injured in operating the press and brought an action through his next friend, in the Superior Court of Cook County, to recover the damages sustained, counting on the statute of Illinois passed in 1903 (Laws of 1903, p. 187, Hurd's Statutes, 1909, p. 1082) which, by § 11, prohibited the employment of children under the age of sixteen years in various hazardous occupations including that in which the injury occurred. The trial court, refusing to direct a verdict for the defendant, instructed the jury that if the plaintiff was in fact less than sixteen years old and when injured

was employed by the defendant upon a stamping machine, the defendant was guilty of a violation of the statute and the plaintiff was entitled to recover. A verdict was rendered for the plaintiff and judgment thereon was affirmed by the Supreme Court of the State. 250 Illinois, 303. The case comes here on error.

The plaintiff in error complains of the ruling that a violation of the statute gives a right of action to the employé in case of his injury, but this is a question of state law with which we are not concerned.

The Federal question presented is whether the statute as construed by the state court contravenes the Fourteenth Amendment. It cannot be doubted that the State was entitled to prohibit the employment of persons of tender years in dangerous occupations. *Holden* v. *Hardy*, 169 U. S. 366, 392, 395; *Jacobson* v. *Massachusetts*, 197 U. S. 11, 31; *Muller* v. *Oregon*, 208 U. S. 412, 421; *Chicago, Burlington & Quincy R. R. Co.* v. *McGuire*, 219 U. S. 549, 568, 569. It is urged that the plaintiff in error was not permitted to defend upon the ground that it acted in good faith relying upon the representation made by Beauchamp that he was over sixteen. It is said that, being over fourteen, he at least had attained the age at which he should have been treated as responsible for his statements. But, as it was competent for the State in securing the safety of the young to prohibit such employment altogether, it could select means appropriate to make its prohibition effective and could compel employers, at their peril, to ascertain whether those they employed were in fact under the age specified. The imposition of absolute requirements of this sort is a familiar exercise of the protective power of government. *Reg.* v. *Prince*, L. R. 2 C. C. 154; *People* v. *Werner*, 174 N. Y. 132; *State* v. *Kinkead*, 57 Connecticut, 173; *Ulrich* v. *Commonwealth*, 69 Kentucky, 400; *State* v. *Heck*, 23 Minneapolis, 549; *State* v. *Hartfiel*, 24 Wisconsin, 60; *State* v. *Tomasi*, 67

Vermont, 312; *Commonwealth* v. *Green*, 163 Massachusetts, 103; 3 Greenleaf on Evidence, § 21; 30 Am. Rep. (*note*) 617–620. And where, as here, such legislation has reasonable relation to a purpose which the State was entitled to effect, it is not open to constitutional objection as a deprivation of liberty or property without due process of law. *Shevlin-Carpenter Co.* v. *Minnesota*, 218 U. S. 57, 70.

It is also contended that the statute denied to the plaintiff in error the equal protection of the laws, but the classification it established was clearly within the legislative power. *Heath & Milligan Co.* v. *Worst*, 207 U. S. 338, 354; *Louisville & Nashville R. R. Co.* v. *Melton*, 218 U. S. 36, 54; *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 78; *Mutual Loan Co.* v. *Martell*, 222 U. S. 225, 236.

The judgment is

Affirmed.